

Lord High Steward. In answer of the Petition, Take the Petitioners from the Bar.
Which being done, Proclamation was made for Silence, as usual.
Lord High Steward. My Lords, This Proceeding being at an End, nothing remains to be done
here, but to determine the Commission.
Lord High Steward. Let Proclamation be made, dissolving the Commission of High
Steward.
Sajant at Bar. Oyez, Oyez, Oyez! Our Sovereign Lord the King does hereby charge
and command all members of Parliament here present, and that have hereafter to depart hence
in the Peace of God, and of our said Sovereign Lord the King; for his Grace my Lord High
Steward of Great Britain, now to dissolve this Commission.
Then the Wine was being delivered to the Lord High Steward by the Gentleman Usher of
the Black Rod, upon his Knee, the Grace of God was uncovered; and, holding the staff in both his
Hands, broke it in two, and did lay the one part to the right, and the other to the left, saying, the Chain
came down to the Woodcock, and said, and said, and said, and said, and said, and said, and said, and said,
of Parliament.
Lord High Steward. This is the last time that the Chamber of Parliament
shall be held in the House of Commons, and the Order they came down.
And the Petitioners were carried back to the House of Lords.



F I W I S

IN Pursuance of an Order of the House of
PEERS, of the Nineteenth Day of March 1746,
I do appoint SAMUEL BURLINGAME to Print
the whole Proceedings in the House of Peers,
upon the Impeachment exhibited by the Knights,
Citizens, and Burgesses, in Parliament assembled,
in the Names of Themselves, and of all the Com-
mons of Great Britain, against James Lord Lovat,
for High Treason; And do forbid any other
Person to Print the same.

Hardwick C.

IN Purfuance of an Order of the HOUSE of PEERS, of the Nineteenth Day of *March* 1746, I do appoint SAMUEL BILLINGSLEY to Print the whole Proceedings in the House of Peers, upon the Impeachment exhibited by the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, in the Names of Themſelves, and of all the Commons of *Great Britain*, againſt *Simon Lord Lovat*, for High Treason; And do forbid any other Perſon to Print the ſame.

Hardwicke C.

16c8
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THE WHOLE
PROCEEDINGS
IN THE
HOUSE of PEERS,
UPON THE
IMPEACHMENT
EXHIBITED BY THE

*Knights, Citizens, and Burgesſes, in Parliament
Aſſembled, in the Names of Themſelves, and
of All the Commons of Great Britain;*

AGAINST
Firmer SIMON Lord LOVAT,
FOR
HIGH TREASON:

The PROCEEDING in *Westminster-Hall* being
Begun on *Monday* the 9th Day of *March*, and Continued on
Tuesday the 10th, *Wednesday* the 11th, *Friday* the 13th, *Monday*
the 16th, *Wednesday* the 18th, and *Thursday* the 19th Days of
March, 1746-7: On the laſt of which Days Judgment of High
Treaſon was given againſt him.

Published by Order of the HOUSE of PEERS.

L O N D O N:
Printed for SAMUEL BILLINGSLEY, near the
Rolls-Gate, in Chancery-Lane.

MDCCXLVII.

THE WHOLE
 PROCEEDINGS
 IN THE
 HOUSE OF PEERS
 UPON THE
 IMPEACHMENT

EXHIBITED BY THE
 KNIGHTS, CITIZENS, AND BURGESSES, IN PARLIAMENT
 ASSEMBLED, IN THE NAMES OF THEMSELVES, AND OF
 OF ALL THE COMMONS OF GREAT BRITAIN, TO THEIR
 CITIZENS, BURGESSES, AND FREEMEN, IN PARLIAMENT
 ASSEMBLED, TO REMAIN AGAINST
 SYMON LORD LONAT
 FOR

HIGH TREASON

The PROCEEDING in Westminster-Hall being
 Begun on Monday the 9th Day of March, and Continued on
 Tuesday the 10th, Wednesday the 11th, Thursday the 12th, Friday the 13th, Monday
 the 16th, Wednesday the 18th, and Thursday the 19th Days of
 March, 1746-7: On the last of which Days Judgment of High
 Treason was given against him.

Published by Order of the HOUSE OF

L O N D O N :

Printed for SAMUEL BILLINGSLY, near the
 Rolls-Gate, in Chancery-Lane.

MDCCLXVII.

THE WHOLE
 PROCEEDINGS
 IN THE
 HOUSE of PEERS,
 UPON THE
 IMPEACHMENT
 Exhibited by the
Knights, Citizens, and Burgesſes, in Parliament
 Aſſembled, in the Names of Themſelves and
 of All the Commons of *Great Britain*;
 AGAINST
SIMON Lord *LOVAT*.

Die Jovis, 11^o Decembris, 1746.

A Meſſage was brought from the Houſe of Commons, by Sir *William Yonge*, others, to acquaint this Houſe, That they, having Matters to communicate to Lordſhips, of great Importance to the King and Kingdom, do deſire, That Lordſhips will continue fitting for ſome time.

To which the Houſe agreed.

And the Meſſengers were called in again; and acquainted by the Lord Chancellor, That the Lords will continue fitting for ſome time, as deſired.

The Houſe was adjourned during Pleaſure.

The Houſe was reſumed.

A Meſſage was brought from the Houſe of Commons, by Sir *William Yonge*, and others, as follows :

My Lords,

THE Commons of *Great Britain*, in Parliament aſſembled, having received Information of divers Treasons committed by a Peer of this Realm, *Simon Lord Lovat*, have commanded me to impeach the ſaid *Simon Lord Lovat* of High Treason: And I do here, in their Names, and in the Names of all the Commons of *Great-Britain*, impeach the ſaid *Simon Lord Lovat* of High Treason: And I am further commanded to acquaint your Lordſhips, That they will, with all convenient Speed, exhibit Articles to make good the Charge againſt him.

Die Mercurii, 17^o Decembris, 1746.

A Message was brought from the House of Commons, by Sir *William Yonge*, and others, who said, He was commanded by the House of Commons to deliver to this House Articles of Impeachment of High Treason against *Simon Lord Lovat*. — He said, He was also commanded by the Commons to acquaint their Lordships, That they are ready to maintain their Charge : And he delivered in the said Articles.

Which Articles being read :

The Duke of *Newcastle* acquainted the House, That the said Lord *Lovat* is already under Commitment for High Treason in his Majesty's *Tower of London*.

Then the following Order was made :

Whereas the Commons, assembled in Parliament, having this Day exhibited to this House Articles of Impeachment of High Treason against *Simon Lord Lovat* ; It is Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, That the said Lord *Lovat* be brought to the Bar of this House To-morrow at Two of the Clock in the Afternoon, to hear the said Articles read ; and to abide such further Order, as this House shall think fit to make concerning him.

To *Charles Lord Cornwallis*, Constable of his Majesty's *Tower of London*, and, in his Absence, to the Lieutenant of the said *Tower*, or his Deputy.

Die Jovis, 18^o Decembris, 1746.

THE Order being read, for bringing *Simon Lord Lovat* to the Bar of this House, to hear the Articles of Impeachment of High Treason, exhibited against him Yesterday by the House of Commons, read unto him ;

The said Lord *Lovat* was accordingly brought to the Bar, by the Deputy-Gentleman-Usher of the Black Rod : Where he kneeled, until the Lord Chancellor directed him to rise. — Then

The said Articles of Impeachment were read unto him : Which done, the Lord Chancellor asked him, What he had to say thereunto ; and informed him, That, if he had any thing to request of the House, this was his proper Time.

Whereupon he acquainted the House with his Infirmities occasioned by old Age, and particularly alleged his Deafness, that he could not hear what the Contents of the said Articles were : Wherefore, having a Petition prepared to make known to the House his Requests, he desired the same might be read : Which being delivered in, was read by the Clerk, and as follows ; viz.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled,

The Humble Petition of Simon Lord Fraser of Lovat,

Sheweth,

HAT your Petitioner, by reason of his great Age, labours under many Infirmities and Weakness ; and, being intirely ignorant of the Forms of Law, and Method of Proceedings in this August Court, is unable to make any Defence, or give in a proper Answer to the Articles of Impeachment exhibited against him, without the Assistance of able Counsel and Solicitors.

That your Petitioner, during his close Confinement in the *Tower of London*, for now near Five Months, has not been able to obtain One Shilling either out of his Estate or otherwise ; which has been occasioned, as your Petitioner has been informed, by some Grants of a very extraordinary Nature, and which, your Petitioner hopes, shall never again, in this Island, be drawn into Precedent ; authorizing and empowering other Persons, Strangers to your Petitioner, to take Possession of his Estate, and to levy the Rents thereof ; whilst such as had in their Hands any Money or Effects of your Petitioner's, were prohibited and restrained from paying any Part thereof to your Petitioner, or his Order.

That your Petitioner applied several times to one of His Majesty's Principal Secretaries of State, complaining of the Hardships your Petitioner suffered by means of such Proceedings ; and your Petitioner is informed, that Two several Orders were made thereupon, in order to remove the said Prohibitions and Restraints, and to recall the said Powers so granted as above : But notwithstanding thereof, your Petitioner is still in the same deplorable Circumstances,

without

without any Money even to procure him the common Necessaries of Life, and is wholly indebted to General *Williamson* for his Support.

That your Petitioner, when he was apprehended by a Party of His Majesty's Troops in *Scotland*, had, in his Strong-Box, Money and Jewels to the Amount of Seven hundred Pounds and upwards, which they seized, and retain; insisting the same is lawful Prize.

Your Petitioner therefore humbly prays, that your Lordships, moved by your innate Goodness, may be pleased to assign your Petitioner such and so many Counsel and Solicitors, as your Lordships shall think proper: That your Petitioner may have a Copy of the Articles of Impeachment; and may not be ordered by your Lordships to begin and enter upon his Defence, while he remains stripped and deprived of all the necessary Means which the Law allows him for his Defence and Support; but that such a reasonable Time may be allowed your Petitioner, to prepare and put in his Answer, that he may be enabled to receive Money sufficient to Retain and Fee his Counsel and Solicitors; without which, your Petitioner apprehends, he cannot have their Assistance and Advice: And that, for that Purpose, the Money and Jewels contained in the Strong-Box, and unjustly taken as above, may be immediately restored to your Petitioner, by your Lordships Order.

And your Petitioner shall ever pray, &c.

LOVAT.

The Counsel that Lord *Lovat* desires may be assigned are, Mr. *Starkie*, Mr. *Forrester*, Mr. *Ford*, and Mr. *Wilmott*: And the Solicitors are, Mr. *George Ross*, Mr. *Hugh Frazer*, and Mr. *Goostrey*.

The Petition being read, the said Lord *Lovat* was asked by the Lord Chancellor, If he had any thing further to offer.

To which he answering in the Negative;

He was directed to withdraw.

And the House taking the Requests of the said Petition into Consideration;

Ordered, That the said Lord *Lovat* may have a Copy of the said Articles of Impeachment exhibited against him: And that he do put in his Answer thereunto, in Writing, on or before *Tuesday* the 13th Day of *January* next: And that Mr. *Starkie*, Mr. *Forrester*, Mr. *Ford*, and Mr. *Wilmott*, the Counsel mentioned in the said Petition, be assigned to assist him in preparing his Answer, and likewise in his Defence, in Matters of Law: And that Mr. *George Ross*, Mr. *Hugh Frazer*, and Mr. *Goostrey*, be also assigned Solicitors for him: And that such Counsel and Solicitors may have Access to him at all seasonable Times: And that the said Lord *Lovat* have Liberty to cause Search to be made, and Copies of Records and Journals to be taken out, in order to his Defence: And that he shall have Summons issued for such Witnesses as he shall send in the Names of, to be by him made use of at his Tryal; which Witnesses shall have the Protection of this House for their safe Coming and Going, during the Time of the said Tryal.

Ordered, That the Lord Chancellor do acquaint the Lord *Lovat*, That it is expected by their Lordships, that he would send in the Names of such Witnesses as he shall desire to be summoned, as soon as conveniently he can; and that, in case he do not, he must not expect to be indulged with any further Delay on that Account.

Ordered likewise, That the said Lord *Lovat* be permitted to receive the Rents and Profits of his Estate, by his Factors or Agents, in like manner as if he was not under an Accusation of High Treason: And that his Majesty's Advocate for *Scotland* do take the proper Methods to carry this Order into Execution.

Then the said Lord *Lovat* was called in again: And the Lord Chancellor acquainted him with what the House had ordered.

And then he was a Second time directed to withdraw.

Ordered, That Lord *Lovat* do stand committed to his Majesty's *Tower of London*, to be there safely kept, in order to his Tryal, till he shall be thence delivered by due Course of Law: And that no Person shall have Access to him without the special Leave of the House.

Ordered, That the Lord Chancellor do write Letters to all the Lords who have not been present in the House either this Day or Yesterday, in the usual manner, requiring their Attendance on the Service of this House (all Excuses set apart), on *Wednesday* the 21st Day of *January* next, on Occasion of the Proceedings now depending in this House against *Simon Lord Lovat*, who stands impeached by the House of Commons of High Treason.

Die Martis, 23^o Decembris, 1746.

A Petition of *Simon Lord Fraser* of *Lovat* was presented, and read; praying, That he may be allowed to the 1st Day of *February* for answering the Articles of Impeachment exhibited by the House of Commons against him; within which Time he hopes, that the Care and Diligence of his Agents in *Scotland* will, notwithstanding the Season of the Year, furnish him with the Papers and Materials necessary for that End.

And thereupon Mr. *George Ross*, one of the Petitioner's Solicitors, being called in, and heard at the Bar, touching the Contents of the said Petition;

He was directed to withdraw.

Ordered, That the said Petition be rejected.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do bring the said Lord *Lovat* to the Bar of this House, on *Tuesday* the 13th Day of *January* next, at Two of

Clock in the Afternoon, in order to the putting in his Answer to the Articles of Impeachment of High Treason, exhibited against him by the House of Commons.]

Die Martis, 13^o Januarii, 1746.

THE Order of the Day being read, for bringing *Simon Lord Lovat* to the Bar of this House, in order to the putting in his Answer to the Articles of Impeachment of High Treason, exhibited against him by the House of Commons, he was brought to the Bar accordingly: Where he kneeled, till the Lord Chancellor acquainted him he might rise. He then delivered in his Answer to the said Articles: And the same was read.

Then the Lord *Lovat* was asked by the Lord Chancellor, If he had any thing further to offer. Whereupon he acquainted the House, He had caused to be prepared Two Petitions to their Lordships, which he conceived did concern the Justice as well as the Honour of the House. And his Lordship delivering in the said Petitions, the same were severally read;

The first complaining, That the Order of this House of the 18th of *December* last, relating to the Factory or Receivership of the Petitioner's Rents, had not been obeyed, so as to be made effectual to him; nor had the Contents of the Strong-Box taken from him, and now in Captain *Ferguson's* Possession, been delivered to his Agent, as had been promised him: And praying, that Obedience to the said Order might be compelled, and an immediate Restitution of the Money taken out of the said Box; or that such Order might be made concerning this Matter, as to the House should seem meet.

The other Petition setting forth, That Mr. *William Fraser* Writer to the Signet, who for many Years had acted as his chief Agent, and had the Management of his Estate in *Scotland*, was by his Direction come to Town; but could not have Access to him without the Permission of this House: And praying, That the said *Fraser* might have Liberty to come to the Petitioner at all seasonable Times.

Then the Lord *Lovat* was directed to be taken from the Bar.

Which done; The first Petition was again read: And, after Debate, and reading the said Order, relating to the Receipt of the Rents and Profits of the said Lord *Lovat's* Estate,

Ordered, That the said Petition be rejected.

Then the other Petition being likewise read;

Ordered, That the said *William Fraser* be permitted to have Access to the Petitioner, at all seasonable Times, between the Hours of Ten of the Clock in the Forenoon, and Two of the Clock in the Afternoon, in the Presence of such Officer belonging to the *Tower of London*, as the Constable thereof shall appoint.

Ordered, That a Copy of the Answer of the said Lord *Lovat* to the Articles of Impeachment of High Treason, exhibited against him by the House of Commons, be prepared: And that, when the same has been carefully examined by the Clerk, it be sent by a Message to the House of Commons, and left with that House.

Ordered, That the said Lord *Lovat* be conveyed back to the *Tower of London*, by the Lieutenant of the same, or his Deputy, to be there kept in safe Custody, until he shall be thence delivered by due Course of Law.

Die Veneris, 16^o Januarii, 1746.

A Message was brought from the House of Commons by Sir *William Yonge*, and others, to acquaint this House, That they have considered the Answer of *Simon Lord Lovat* to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses, assembled

asssembled in Parliament ; and do aver their Charge against the said *Simon Lord Lovat* for High Treason, to be true ; and that the said *Simon Lord Lovat* is guilty in such manner as he stands impeached : And that the Commons will be ready to prove their Charge against him at such convenient Time as shall be appointed for that Purpose.

Die Jovis, 22° Januarii, 1746.

A Petition of *Simon Lord Lovat*, stiling himself *Simon Lord Fraser of Lovat*, was presented, and read ; praying, That Mr. *William Fraser* may be appointed one of his Solicitors, in the room of Mr. *Hugh Fraser*, he being necessarily required to go into the Country.

Ordered, That the said Mr. *William Fraser* be assigned the Petitioner's Solicitor, in the room of the said Mr. *Hugh Fraser*, as desired : And that the said Mr. *William Fraser* may have Access to the Petitioner at all seasonable Times.

Ordered, That *Monday* the 23d Day of *February* next be, and is hereby appointed for, the Tryal of *Simon Lord Lovat*, in *Westminster-Hall*, upon the Articles of Impeachment exhibited against him by the House of Commons for High Treason.

And a Message was sent to the House of Commons, by Mr. *Spicer* and Mr. *Edwards*, to acquaint them therewith.

Then the House appointed a Committee to inspect the Journals of this House, relating to former Cases of Impeachments ; and to consider of the proper Methods of proceeding on the Impeachment against *Simon Lord Lovat* ; and to report to the House what they shall think proper thereupon.

Die Lunæ, 2° Februarii, 1746.

THE Earl of *Warwick* reported from the Lords Committees appointed to inspect the Journals of this House, relating to former Cases of Impeachments ; and to consider of the proper Methods of proceeding on the Impeachment against *Simon Lord Lovat* ; and to report to the House what they shall think proper thereupon ;

That the Committee had met, and inspected the Journals of this House, in former Cases of Impeachments ; and had considered the Matters to them referred ; and had come to several Resolutions : Which his Lordship reported. And thereupon several Orders were made, touching the Course of Proceeding to, and at, the ensuing Tryal, and for preserving the Peace ; and amongst them as follows ; viz.

Ordered, That an humble Address be presented to his Majesty, to acquaint his Majesty, That this House hath appointed the Tryal of *Simon Lord Lovat*, upon the Articles of Impeachment of High Treason exhibited against him by the House of Commons, to begin in *Westminster-Hall* on *Monday* the 23d Day of this instant *February* : And humbly desire, That his Majesty will be pleased to appoint a Lord High Steward, to continue during the said Tryal.

Ordered, That the said Address be presented to his Majesty by the Lords with White Staves.

Ordered, That the Counsel assigned the said Lord *Lovat* may be present when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any such shall arise during the said Tryal.

Ordered, That the Witnesses, which shall be produced by the Lord *Lovat* to be examined in his Defence, shall be examined upon Oath ; which Oath shall be administered in the like Form as an Oath was directed by this House to be administered to any Witnesses, who should be produced by the Earl of *Wintoun* at his Tryal.

Ordered, That the Lord Great Chamberlain be desired to take care and give Order, that Accommodations be made in the Scaffold already erected in *Westminster-Hall*, for the Commons, as hath been used in Tryals in *Westminster-Hall* upon Impeachments.

Die Mercurii, 4° Februarii, 1746.

THE Lord Steward reported, That the Lords with White Staves had (according to Order) presented to his Majesty the Address of this House of *Monday* last, for the Appointment of a Lord High Steward, to continue during the Tryal of *Simon Lord Lovat* ; and that his Majesty had been pleased to give Orders accordingly.

Ordered, That the said Commission for appointing a Lord High Steward shall be in the like Form as that for the Tryal of the Lord Viscount *Stafford*, as entered in the Journal of this House the 30th of *November* 1680, except that the same be in the *English* Language.

Die Mercurii, 18^o Februarii, 1746.

A Petition of *Simon Lord Fraser of Lovat* was presented, and read; setting forth, That, upon the Appointment of his Tryal, he immediately dispatched one of his Solicitors to summon the Petitioner's material Witneses, who are at great Distances from each other, inhabiting in the Counties of *Inverness* and *Ross*; but, by reason of the Inclemency of the Weather, the Badness of the Roads, and other unavoidable Accidents, none of them are yet arrived, nor can possibly be got to *London* by the Time of Tryal; and praying, That this House will appoint some more distant Time for that Purpose.

And thereupon *William Fraser* and *William Goostrey*, Two of the Petitioner's Solicitors, were called in, and heard at the Bar, to verify the Truth of the Allegations of the said Petition: And being withdrawn,

Ordered, That the Time appointed for the Petitioner's Tryal be, and is hereby, enlarged till To-morrow Fortnight, the 5th Day of *March* next.

Ordered, That a Message be sent to the House of Commons, to acquaint them, That, upon the humble Petition of *Simon Lord Lovat*, for putting off his Tryal to a further Day, for the Reasons therein alleged, the Lords have enlarged the Time appointed for the Tryal of the said Lord *Lovat* till Thursday the 5th Day of *March* next.

And a Message was accordingly sent to the House of Commons, by Mr. *Holford* and Mr. *Bennet*, to acquaint them therewith.

Die Lunæ, 2^o Martii, 1746.

A Petition of *Simon Lord Fraser of Lovat*, with an Affidavit of *Hugh Fraser* thereto annexed, were presented to the House, and read, as follows:

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled,

The humble Petition of Simon Lord Fraser of Lovat,

Sheweth,

THAT your Lordships having appointed your Petitioner's Tryal for the 23d of *February*, your Petitioner did lately take the Liberty humbly to represent the Impossibility he was under to prepare so soon for Tryal, in respect his Witnesses, from the Badness of the Road, were not then arrived; and your Lordships were pleased to indulge your Petitioner with a Delay till Thursday next.

That *Hugh Fraser*, whom your Petitioner had directed to serve your Lordships Summons upon your Petitioner's Witnesses, arrived in Town, with sundry of them, late on *Friday* Night, having duly served your Lordships said Order upon several other Persons, who were all material Witnesses for your Petitioner.

That *Thomas Fraser* of *Struy*, and *Donald Fraser* alias *Down*, Two of the Witnesses, served as aforesaid, were prevented, by Sickness, from setting out as early as some of the rest; but had declared to the said *Hugh Fraser* their Willingness to obey your Lordships Summons as soon as they were able to travel; which your Petitioner hopes may soon be the Case.

That *William Fraser* of *Belloan*, *Alexander Fraser* of *Belnain*, *Thomas Fraser* of *Garthmore*, *Alexander Fraser* of *Beloloyne*, and the Reverend Mr. *Donald Fraser*, Minister at *Killearnan*, who are all material Witnesses for your Petitioner, and, without whose Testimony, your Petitioner cannot safely proceed to Tryal, have absolutely refused to attend, though regularly served with your Lordships Summons, as by Affidavit annexed appears; and that the Persons, named as aforesaid, are material and necessary Witnesses, your Petitioner is ready to make Affidavit of; but, being strictly confined in the *Tower*, and no Person having Access to him without your Lordships Order, he has no Opportunity so to do.

That, under these Circumstances, and that your Petitioner, without your Lordships Interposition, cannot compel the said Persons to attend his Tryal, he is under a Necessity to apply to your Lordships for Relief, without which, he must, as to the Charge in some of the aforesaid Articles, remain defenceless, should your Lordships, in the Interim, proceed to Tryal.

Your Petitioner therefore humbly prays, your Lordships would be pleased to appoint a more distant Day for his Tryal; and that your Lordships would be pleased to compel the said *William*, *Alexander*, *Thomas*, *Donald*, and *Alexander Frasers*, to attend

your

your Petitioner's Tryal at such Time as your Lordships shall think fit; or to grant him such other Relief, as to your Lordships, in your great Wisdom, shall seem meet.

And your Petitioner shall ever pray.

LOVAT.

In the House of Lords.

Upon an Impeachment for High Treason against *Simon Lord Lovat*.

HUGH FRASER, of *Grays-Inn*, in the County of *Middlesex*, Gentleman, maketh Oath, That he this Deponent did, on the Tenth Day of *February* last, personally serve *Thomas Fraser* of *Struy*, and, on the Twelfth Day of the said Month of *February*, did also personally serve *William Fraser* of *Belloan*, *Alexander Fraser* of *Belnain*, *Thomas Fraser* of *Garthmore*, *Alexander Fraser* of *Beloloyne*, and *Donald Down*, alias *Fraser*, with an Order of this Honourable House, bearing Date the Sixteenth of *January* last past; whereby it was ordered, That the said several Persons, and others named in such Order, should attend this House as Witnesses for the said *Simon Lord Lovat*, who stands impeached of High Treason by the House of Commons, by delivering to each of them a true Copy of the said Order, and, at the same time, shewing to each of them the said original Order. And this Deponent further saith, that the said *William Fraser* of *Belloan*, *Alexander Fraser* of *Belnain*, *Thomas Fraser* of *Garthmore*, and *Alexander Fraser* of *Beloloyne*, tho' served with the said Order as aforesaid, absolutely refused to obey the said Order; and this Deponent verily believes will not attend the said Tryal: And the said *Thomas Fraser* of *Struy*, and *Donald Down*, alias *Fraser*, were both, at the Time of such Service, sick, and unable to travel; and declared themselves incapable of complying with the said Order.

Hugh Fraser.

Sworn the 2d Day of *March*, 1746. before me, at the Court of Requests.

M. Thurston.

Afterwards the said *Hugh Fraser*, and Mr. *Goostrey*, one of the Prisoner's Solicitors, were called in, and examined at the Bar: And being withdrawn,

Ordered, That the said Petition be rejected.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do bring to the Bar of this House, in *Westminster-Hall*, on *Thursday* next, at Ten of the Clock in the Forenoon, *Simon Lord Lovat*, in order to his Tryal upon the Impeachment of High Treason exhibited by the House of Commons against him.—Then

A Message was sent to the House of Commons by the former Messengers, to acquaint them, that the Lords will be ready to go down into *Westminster-Hall*, at the Time above-mentioned, in order to the Tryal of the said Lord *Lovat*.

Die Martis, 3^o Martii, 1746.

A Petition of *Simon Lord Fraser of Lovat*, with the Affidavits of Mr. *George Ross*, and Mr. *William Fraser*, thereto annexed, were presented, and read, as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The Humble Petition of Simon Lord Fraser of Lovat,

Sheweth,

THAT nothing but the utter Impossibility the Petitioner and his Agents are under, of preparing his Defence against *Thursday* the Fifth of this Instant *March*, could have induced him to trouble your Lordships with this second Application for some Days further Time.

But none of your Petitioner's Witnesses coming to Town till late on *Friday* Night last; and one of your Petitioner's Agents having received an Account by last Night's Post, that two other Persons, who were summoned as Witnesses for your Petitioner, set out from *Edinburgh* on the 24th and 25th of last Month, and are not yet arrived in *London*, but expected here by the End of this Week, your Petitioner cannot possibly be prepared to take his Tryal before *Monday* next.

The Petitioner begs Leave further to represent to your Lordships, that, in the present unhappy Situation of his Affairs, he has no Means of furnishing himself with Money, either for applying to Counsel, bearing the Charge of his Witnesses, or other necessary Expence, but from the Supply afforded him by his Agents, who have already advanced him

consider-

considerable Sums for the above Purposes, which are already expended: That the Solemnity, and unavoidable Length of the Proceedings, making further Sums of Money still necessary, the Petitioner is afraid, that his Defence may suffer on that account, unless your Lordships are pleased, in Compassion to his present Difficulty, to give some kind of Encouragement to his Agents, to hope they shall be repaid what they already have, or may hereafter disburse on the Petitioner's account; it being, by the Loss of the Petitioner's Moveables, out of his own Power to give them any kind of Indemnification.

The Petitioner also prays your Lordships to assign Mr. *Charles Hamilton-Gordon*, to be one of his Counsel, in place of Mr. *Starkey*, who, on account of the bad State of his Health, has declined giving the Petitioner his Assistance.

May it therefore please your Lordships, in Consideration of the Premises, to put off the Petitioner's Tryal until the next *Monday*; and to make such other Order, upon this Application, as to your Lordships shall seem meet.

And your Petitioner shall ever pray, &c.

LOVAT.

In the Impeachment of the Commons of *Great Britain* against *Simon Lord Fraser of Lovat*,

GEORGE ROSS, one of the Solicitors assigned by the Right Honourable the House of Lords to the said *Simon Lord Fraser of Lovat*, maketh Oath, That, since his Appointment, he has, at different Times, laid out and expended upwards of Six hundred Pounds, out of his own Pocket, in Feeing of his Lordship's Counsel, bringing up his Witnesses, and other Charges attending the several Steps already taken, towards preparing for the said Lord's Defence, without receiving any Money or Security whatsoever for his Indemnification.

George Ross.

Sworn at the publick Office, 2d *March*, 1746, before

W. Kinaston.

In the Impeachment of the Commons of *Great-Britain* against *Simon Lord Lovat*.

In the House of Lords.

WILLIAM FRASER, Writer to his Majesty's Signet, maketh Oath, That, last Night, he received Advice from *Edinburgh*, that *Thomas Fraser of Struy*, and Mr. *Donald Fraser*, Two of the Witnesses summoned on the Behalf of Lord *Lovat*, are now upon the Road, and will be here by *Saturday* or *Sunday* next: Which Information this Deponent believes to be true.

Sworn at the publick Office, 3d *March*, 1746, before

Will. Fraser.

Tho. Bennet.

Ordered, That the Tryal of the Petitioner be put off to *Monday* next, as desired.

A Message was sent to the Commons, by Mr. *Burroughs* and Mr. *Allen*, to acquaint them, That this House, upon the Petition of the said Lord *Lovat*, for the Reasons therein contained, hath enlarged the Time of his Tryal upon the Impeachment of High Treason exhibited against him by the House of Commons, to *Monday* next, at Eleven of the Clock in the Forenoon; and that their Lordships will be ready to go down into *Westminster-Hall* at the Time above-mentioned, in order to his Tryal.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do bring the said Lord *Lovat* to the Bar of this House in *Westminster-Hall*, at Ten of the Clock in the Forenoon, on *Monday* next, in order to his Tryal upon the said Impeachment.

Monday, the 9th Day of March, 1746.

THE Lords met in the House of Lords, in their Robes, and, after Prayers, adjourned into *Westminster-Hall*.

The First Day, in Westminster-Hall.

ABOUT Eleven of the Clock, the Lords came from their own House into the Court erected in *Westminster-Hall*, in the Manner following:

The Lord High Steward's Gentlemen Attendants, Two and Two.

The

The Clerks Assistant to the House of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery, bearing the King's Commission to the Lord High Steward.

The Masters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldest Sons, Two and Two.

Peers Minors, Two and Two.

York and *Windfor* Heralds.

Four Serjeants at Arms, with their Maces, Two and Two.

The Yeoman Usher of the House.

Then the Peers, Two and Two, beginning with the youngest Baron.

Then Four Serjeants at Arms, with their Maces, Two and Two.

The Serjeant at Arms attending the Great Seal, and Purse-Bearer.

Then Garter King at Arms, and the Gentleman Usher of the Black Rod, carrying the white Staff before the Lord High Steward.

Philip Lord *Hardwicke*, Lord High Chancellor of *Great-Britain*, Lord High Steward, alone, his Train borne.

The Lords having taken their Places in the Court, according to their Degrees, the Lord High Steward being upon the uppermost Woolpack; and the Commons, and their Managers, being also in the Seats respectively prepared for them;

The Clerk of the Crown in Chancery, having his Majesty's Commission to the Lord High Steward in his Hand, standing before the Clerk's Table, with his Face towards the State, made Three Reverences, the First at the Table, the Second in the Midway, and the Third near the Woolpack; then kneeled down, and, on his Knee, presented the Commission to the Lord High Steward; who delivered the same back to him; who, rising, made Three Reverences, and returned with it to the Table: And then Proclamation was made for Silence in this Manner:

Serjeant at Arms. Oyes, Oyes, Oyes. Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up, uncovered, while the Commission is reading.

All the Peers uncovered themselves; and they, and all others, stood up, uncovered, while the Commission was read; which is as follows: *Viz.*

GEORGE R.

GEORGE the Second, by the Grace of GOD, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, To Our right trusty and well-beloved Counsellor *Philip* Lord *Hardwicke*, Baron of *Hardwicke* in Our County of *Gloucester*, Our Chancellor of *Great Britain*, Greeting. Whereas *Simon* Lord *Lovat*, before Us in Parliament, by the Knights, Citizens, and Burgeesses, in Our Parliament assembled, in the Name of the said Knights, Citizens, and Burgeesses, and in the Name of all the Commons of Our Kingdom of *Great Britain*, is and stands impeached and accused of High Treason, by him the said *Simon* Lord *Lovat* committed and perpetrated; We, considering that Justice is an excellent Virtue, and pleasing to the Most High, and being willing, that the said *Simon* Lord *Lovat* should, before Us in Our present Parliament, according to the Law and Custom of this Our Kingdom of *Great Britain*, and according to the Custom of Parliament, be heard, sentenced, and adjudged, touching and concerning the said High Treason, whereof he stands impeached and accused, as aforesaid, and that all other Things, which are necessary in this Behalf, should be in due Manner done and executed; and forasmuch as the Lords Spiritual and Temporal in Our present Parliament assembled, have most humbly besought Us, that We would vouchsafe to appoint a Steward of *Great Britain* for this Time; We, very much confiding in your Fidelity, Prudence, provident Circumspection, and Industry, have, for this Cause, ordained and constituted you Steward of *Great Britain*, to bear, execute, and exercise, for this Time, the said Office, with all Things to the same Office in this Behalf due and belonging: And therefore We command you, that you diligently set about the Premises, and, for this Time, do exercise and execute, with Effect, all those Things, which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witness whereof, We have caused these Our Letters to be made patent. Witness Ourselves at *Westminster*, the Ninth Day of *March*, in the Twentieth Year of Our Reign.

By the King Himself, signed with his own Hand.

YORKE and YORKE.

Serjeant at Arms. God save the King.

D

Then

Then Garter, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by Garter, Black Rod, and the Purse-Bearer (making his proper Reverences towards the Throne), removed from the Woolpack to an armed Chair, which was placed on the uppermost Step but One of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms, Make Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes. Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Lord High Steward. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay.

Then another Proclamation was made, as follows:

Serjeant at Arms. Oyes, Oyes, Oyes. Lieutenant of the *Tower of London*, Bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

Then *Simon Lord Lovat* was brought to the Bar by the Deputy-Governor of the *Tower*, having the Ax carried before him by the Gentleman Gaoler, who stood with it on the Left Hand of the Prisoner, with the Edge turned from him. The Prisoner, when he approached the Bar, made Three Reverences, and then fell upon his Knees at the Bar.

Lord High Steward. Your Lordship may rise.

Then the Prisoner rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers: Which Compliment was returned him by his Grace, and the Lords.

And Proclamation being again made for keeping Silence,

The Lord High Steward spake to the Prisoner as follows:

Lord High Steward. **S**IMON Lord Lovat, You stand impeached of High Treason by the Knights, Citizens, and Burgeses, in Parliament assembled, in the Names of themselves, and of all the Commons of *Great Britain*; and your Lordship is now brought to the Bar of this House, to receive your Tryal upon that Impeachment.

The Weight of this Accusation, the solemn Manner of exhibiting and prosecuting it, and the Awfulness of this supreme Judicature, the most illustrious in the World, are Circumstances, that may naturally strike your Mind with anxious and alarming Apprehensions. Reasonable and well-grounded must those Apprehensions be, if they proceed from that greatest of all Terrors, a Consciousness of Guilt. But if your Lordship is innocent; if you have really preserved yourself untainted with the heinous Crimes laid to your Charge, as you have averred by your Answer; these very awful Circumstances, when duly considered, ought to have a contrary Effect, and to afford you Support and Consolation.

Your Lordship can never doubt of the greatest Fairness and Candour in the Management of a Prosecution carried on by the House of Commons, intrusted and highly concerned to preserve the Rights and Liberties of their Fellow-Subjects. Neither can you entertain the least Doubt of a just and impartial Tryal, where the Law of the Land, and the Custom and Usage of Parliament (an essential Part of that Law), constitute the Rule of Proceeding; and the Decision and Judgment rest in the Breasts of these noble Lords your Peers, who are to try you upon that Honour, which is inseparable from them, and to judge you by that Law, which is the great Security of Themselves and their Posterity.

It is my Duty to put your Lordship in mind of some Things, which may be of Use to you in the Conduct of your Defence; but in this I shall be the shorter, since, at your own Request, Counsel have been already assigned you, with whom you must be presumed to have advised.

Your Lordship must give due and patient Attention to the Reading of the Articles of Impeachment, and what shall be said by the Managers for the House of Commons, or offered in Evidence against you, without giving any Interruption: But when the Managers shall have finished the Examination, on their Part, of any Witnesses produced by them, you will have Liberty to cross-examine that Witness.

When the Managers for the Commons shall have gone through their Evidence, and closed what they shall think fit to offer by way of Charge, then will be your Lordship's Time to make your Defence. In doing this, you and your Witnesses will be heard with the greatest Attention and Equity.

But your Lordship must take notice, that your Counsel are not to examine or cross-examine any Witness, nor to give you any Assistance, while Matter of Fact only is in question; but, if any Point or Matter of Law shall arise during this Proceeding, they will, according to the known Rules in such Cases, be heard to it in your Behalf; and, for that Purpose, are permitted to be present whilst your Lordship is at the Bar.

The Witnesses produced in your Defence, must be examined upon Oath, pursuant to a very just and wise Provision made by Act of Parliament in the First Year of the late Queen Anne, and according to the Form established by their Lordships in former Cases of Impeachments.

By Command of their Lordships, I am further to acquaint you, and all other Persons, who shall have occasion to speak to this Court, that they are to address themselves to the Lords in general, and not to any Lord in particular.

Before I conclude, I must beg the Indulgence of the House to add one Thing more. If your Lordship shall desire to have the Use of Pen, Ink, and Paper, to take Notes in order to your Defence, I presume it will be permitted; and if, in the Course of your Tryal, you should happen to omit any Advantage which in Law and Justice ought to be allowed to you for your Defence, such is the Candour of my Lords your Judges, that I trust I shall meet with their Approbation in giving you notice of it.

The Articles of Impeachment, and the Lord *Lovat's* Answer thereunto, as also the Replication of the Commons to the said Answer, were (by Command of the Lord High Steward) read, and the same are as follow.

Articles of Impeachment of High Treason against Simon Lord Lovat.

WHEREAS the Imperial Crown and Government of these Kingdoms have been long, duly, and happily established, in the Royal Family of his present most Sacred Majesty, upon Principles equally conducive to the Honour and Safety of the Crown, and to the Protection and Liberty of the Subject; whereby settled Laws are made the common Measure of Justice to both, and a Prerogative wisely calculated to promote the greater Good of the People, and answer the Exigencies of Government, has been ascertained and secured:

And whereas the Reigns of his present Majesty, and his Royal Father, have given the strongest and most illustrious Proofs of the happy Effects of those Principles, in the Exercise of their legal, mild, and equal Administration, under which every Subject, from the highest to the lowest, has had his Religion, his Person, and his Property, fully protected by the most inviolable Observance of the Laws, which have had their free Course, without the least Interruption on the Part of his Majesty, or of his Royal Father:

Notwithstanding which, there have been found many wicked and ungrateful Persons, who have themselves enjoyed all these Blessings in common with the rest of their Fellow-Subjects, and yet have been weak and desperate enough, from time to time, to contrive the Subversion of this happy Establishment, in order to introduce Popish Bigotry and Superstition, instead of the Protestant Religion, and an Arbitrary Tyrannical Power, instead of a Free Government; and, as the only Means of establishing and perpetuating those great Evils, to place the Pretender to his Majesty's Crown upon the Throne of this Kingdom; and, the more easily to obtain these Ends, have, from time to time, taken Advantage of the Distresses, which, in the Course of human Affairs, have happened to their Native Country, to set on foot and prosecute their traiterous Designs:

And whereas divers of the said Traitors to his Majesty have laid hold of the Opportunity arising from the just and unavoidable, but difficult and expensive Wars, in which this Nation has been for some time engaged, to renew their Treasonable Conspiracies, for the bringing their wicked Purposes to Effect, by the Assistance of Troops and Money from his Majesty's Enemies Abroad, and by raising a Rebellion at Home:

And whereas, by the Instigation of, and in Concert with the said Traitors, a great Number of *French* Troops, accompanied by the Eldest Son of the said Pretender, were ready, and had in part embarked, and actually set sail, to invade this Kingdom, in the Year One thousand Seven hundred and Forty-three; but were then prevented from accomplishing their Design by the wise Precautions of His Majesty, and the good Providence of Almighty God.

And whereas the same Traitors, restless and indefatigable in the Prosecution of their said wicked and traiterous Purposes, hoping that the *French*, by the great Superiority of their Numbers in *Flanders*, might be able to invade this Kingdom, and, at the same time, to prevent the Return of his Majesty's Troops from abroad, for the Defence of the Nation, did, in the Year One thousand Seven hundred and Forty-five, encourage the said Eldest Son of the Pretender to his Majesty's Crown; to land, at that critical Juncture, in this Kingdom, who, in pursuance of such Encouragement, did actually land in *Scotland*, and put himself at the Head of a large Body of armed Traitors, and commence and carry on, for a considerable Time, a cruel, unnatural, and bloody War against his Majesty, within this Realm, which has at last been happily suppressed:

A R T I C L E

ARTICLE I.

SIMON Lord *Lovat*, being a Subject of his said Majesty, one of the said Traitors and Rebels, and conspiring and joining with them in their said traiterous Designs, and having withdrawn that due Obedience, Fidelity, and Allegiance, which, as a loyal Subject, he owed, and of right ought to bear, to his said present most Sacred Majesty, the only true, lawful, and undoubted Sovereign of this Kingdom, his true and natural Lord, did, upon the 31st Day of *December*, in the Year of our Lord 1743, in the Shire of *Inverness*, and, on the 28th Day of *October*, in the Year 1745, in the same Shire, and at divers other Days, Times, and Places, wickedly, maliciously, falsely, and traiterously, compass and imagine the Death of his said Majesty.

ARTICLE II.

And for accomplishing his said wicked and traiterous Purpose, he the said *Simon* Lord *Lovat*, upon the said 31st Day of *December*, in the said Year 1743, in the Shire of *Inverness* aforesaid, did traiterously correspond with the said Pretender, obtain and accept a Commission from the said Pretender, to be a Lieutenant-General of his Forces, and another Commission from the said Pretender, to be General of the *Highlanders*; and did also accept from the said Pretender, a Patent or Grant, importing to create him the said *Simon* Lord *Lovat*, Duke of *Frazer*; and then and there did traiterously conspire and enter into an Association with many other Traitors, in order to raise a War and Rebellion against his Majesty, within this Realm, and to obtain Troops, Money, and Succours from *France*, for that Purpose.

ARTICLE III.

And the said *Simon* Lord *Lovat* did further falsely and traiterously, at the Times and Place before particularly mentioned, and at divers other Times and Places, assemble himself, with divers other false Traitors and Rebels, against our said Sovereign Lord the King, being armed and arrayed in a warlike Manner, and did raise, and caused to be raised and assembled, great Numbers of armed Men, his Majesty's Subjects, for the Service of the said Pretender, and his said Son; and arrayed, and caused them to be arrayed, in a warlike Manner against his Majesty; and did traiterously levy, and cause to be levied, a cruel and unnatural War against his Majesty, within this Realm, at the Times and Places aforesaid, in Favour of the said Pretender.

ARTICLE IV.

And for the more effectual bringing his said Treasons and traiterous Designs to Effect, he the said *Simon* Lord *Lovat* did, in the Month of *November*, in the said Year 1745, traiterously compose, write, and send, and cause to be composed, written, and sent, a treasonable Letter to the said Eldest Son of the said Pretender, then in Arms within this Kingdom, and joined by, and at the Head of, great Numbers of his Majesty's Subjects, false Traitors and Rebels against his Majesty, then also in Arms and Rebellion against his Majesty within this Kingdom; in which Letter he the said *Simon* Lord *Lovat*, among other Things, expressed the great Pleasure it would give him to end his Days in the Service of the said Pretender's said Son; That he was resolved to send to him his the said Lord *Lovat*'s Eldest Son, to venture his Life in his Service, and deliver up his Clan to him; and further expressed and represented his own great Zeal and Attachment to the said Pretender, and his said Son, and their Cause and Interest, and the Service he had done, was doing, and intended to do, for the said Pretender and his said Son, with intent and in order to confirm, animate, and encourage him the said Pretender, his said Son, his Adherents, and all the other said Traitors, in the Prosecution of their said Treasons, and traiterous Designs.

ARTICLE V.

And the said *Simon* Lord *Lovat*, in further Prosecution of his said Treasons, did, at the Times and Place before-mentioned, and at divers other Times and Places, after the said War and Rebellion began, and while the same was carrying on, traiterously compose, write, and send, and cause to be composed, written, and sent, divers other treasonable Letters and Papers to divers false Traitors, then openly in Arms in this Kingdom against his said Majesty, and to divers others of his Majesty's Subjects, and other Persons, to assure them of his own Zeal and firm Attachment to the Cause and Interest of the said Pretender, and his said Son, and to confirm, solicit, excite, and persuade them to engage in, continue, and prosecute the said War and Rebellion, and to promise and assure them of his Assistance therein.

ARTICLE

ARTICLE VI.

And the more effectually to attain the End of his said Treasons, and treasonable Designs, the said *Simon Lord Lovat* did, at the said Times and Place, and at divers other Times and Places, traiterously aid and assist the said Pretender's said Son, and the said other false Traitors and Rebels, in the carrying on the said Treasons, War, and Rebellion, and furnish and provide them with great Quantities of Arms, Ammunition, Implements of War, Cloaths, and other Things useful and necessary for that Purpose; and also sent his eldest Son, and many of his Name, Family, and Dependents, to the Assistance of the said Pretender's eldest Son, and the said other Rebels; and also gave them Advice, Directions, and Instructions, in the Prosecution of the said Rebellion.

ARTICLE VII.

And the said *Simon Lord Lovat* further, at the Times and Place aforesaid, and at divers other Times and Places, did unlawfully and traiterously hold, entertain, and keep Intelligence and Correspondence, both in Person and by Letters and otherwise, with the said eldest Son of the said Pretender, well knowing him to be so; and also with divers other Persons, who were employed by the said Pretender's said Son; and particularly with *John Murray*, of *Broughton*, Esq; *Donald Cameron* the elder, of *Lochiel*, *Donald Cameron* the younger, of *Lochiel*, *Alexander MacLeod*, Advocate, of *Edinburgh*, *John Roy Stuart*, Doctor *Archibald Cameron*, and divers others: All which Persons were employed by the said eldest Son of the said Pretender in this Kingdom, in the said Rebellion, the said *Simon Lord Lovat* well knowing they were severally employed.

All which said Treasons and Crimes above-mentioned were contrived, committed, perpetrated, acted, and done, by the said *Simon Lord Lovat*, against our said present Sovereign Lord the King, his Peace, Crown, and Dignity, contrary to the Duty of his Allegiance, and against the Laws and Statutes of this Kingdom.

Of all which said Treasons and Crimes, the Knights, Citizens, and Burgeses, in Parliament assembled, do, in the Name of themselves, and all the Commons of *Great Britain*, impeach the said *Simon Lord Lovat*.

And the said Commons, by Protestations, saving to themselves the Liberty of exhibiting, at any time hereafter, any other Accusation of Impeachment against the said *Simon Lord Lovat*; and also of replying to the Answer which he shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall be by them exhibited, according to the Course and Proceedings of Parliament; do pray, That the said *Simon Lord Lovat* be put to answer all and every the Premises: And that such Proceedings, Examinations, Tryal, and Judgment thereupon, may be had and used, as shall be agreeable to Law and Justice.

The Answer of Simon Lord Frazer of Lovat, to the Articles of Impeachment of High Treason exhibited against him, by the Name of Simon Lord Lovat, by the Knights, Citizens, and Burgeses, in Parliament assembled, in the Name of themselves, and all the Commons of Great Britain.

THE said Lord, saving and reserving to himself all Benefit and Advantage of Exception to the Uncertainties and Insufficiencies in the said Articles contained, and also all Advantages and Privileges belonging to him as a Peer of this Realm, in Answer to the aforementioned Article says, That being as fully sensible as any *British* Subject of the many Blessings these Kingdoms have enjoyed under his present and late Majesties mild and equal Administration; and having, in the Rebellion of 1715, given the strongest Proofs of his Zeal for, and Attachment to, his late Majesty, and the Succession of the Crown in his illustrious Family, against such as had undertaken the Destruction of both; he cannot but lament his Misfortune, to have his Fidelity questioned at the End of his Days; and himself, when near worn out with Age and Infirmities, charged with intending the Subversion of a Government he had, in the Strength and Vigour of his Age, exerted his utmost Power and Address to support. Under this heavy Pressure, attended with many other Calamities and Misfortunes, particularly his own Inability to manage his Defence, his only Resource is in your Lordships Justice, who will, he is well assured, regard only plain Facts, not as aggravated by Skill and Oratory, but as clearly and manifestly proved by the Testimony of credible and unexceptionable Witnesses.

Under this firm Persuasion therefore, the said Lord, in Answer to the First and Second Articles, denies that he did wickedly, maliciously, falsely, and traiterously, compass or imagine, the Death of his said present Majesty, or correspond with the Pretender, obtain or accept any Commission or Commissions, Grant, or Letters Patent, from the said Pretender, or traiterously conspire, or enter into any Association whatsoever, for raising a War or Rebellion against his said Majesty, within this Realm, or for obtaining Troops, Money, or Succours, from *France*, for that Purpose, in Manner and Form as by the said Articles is alleged.

To the Third Article, the said Lord denies, That he did assemble himself with any Traitors or Rebels; or raise, or cause to be raised or assembled, any armed Men, for the Service of the said Pretender, or his eldest Son; or array, or cause to be arrayed, any Person or Persons whatsoever, against his said Majesty; or levy, or cause to be levied, any War against his said Majesty, in this Realm, in Manner and Form as in this Article is charged.

To the Fourth Article, the said Lord denies, That he did compose, write, or send, or cause to be composed, written, or sent, any Letter, Paper, or Writing whatsoever, to the said Pretender's eldest Son, to any such Purport or Effect as by the said Article is supposed, or to any other Purport or Effect whatsoever.

To the Fifth Article, he denies, That he did compose, write, or send, or cause to be composed, written, or sent, any Letter or Letters, Paper or Papers, to any Person or Persons, to such Purport or Effect as by the said Article is alleged.

To the Sixth Article, he denies, That he ever did furnish or provide the said Pretender's eldest Son, or any Traitors or Rebels, with any Arms, Ammunition, Implements of War, or other Things useful or necessary, for the Purpose in the said Article mentioned: Nor did he send his eldest Son, or any of his Name, Family, or Dependents, to the Assistance of the said Pretender's eldest Son, or any Rebels whatsoever; nor encourage, advise, direct, or instruct any of them, in the Prosecution of the said Rebellion.

To the Seventh Article, the said Lord denies, That he ever did hold, entertain, or keep, any Intelligence or Correspondence with the said Pretender's eldest Son, either in Person or otherwise; nor did he entertain or keep any Correspondence with any other of the Persons mentioned in the said Article, or with any other Person employed by the said eldest Son of the Pretender, in the said Rebellion, knowing any thing of them to be so employed.

And as to all other Matters and Things in the said Articles contained, and which is not herein particularly answered (if any such there be), the said Lord avers, That he is not guilty of them, or any of them, in Manner and Form as laid in the said Articles, or in any other Manner or Form whatsoever: And humbly submits himself to your Lordships Judgment.

Replication of the Commons to Lord Lovat's Answer.

Die Veneris, 16^o Januarii, 1746.

A Message was brought from the House of Commons, by Sir *William Yonge*, and others, to acquaint this House, That they have considered the Answer of *Simon Lord Lovat* to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgeses, assembled in Parliament: And do aver their Charge against the said *Simon Lord Lovat* for High Treason, to be true: And that the said *Simon Lord Lovat* is guilty, in such Manner as he stands impeached: And that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that Purpose.

Lord High Steward. The Distance of this Place from the Bar is so great, that I am obliged to ask your Lordships Leave to come down to the Table, for the Convenience of Hearing.

Lords. Ay, Ay.

Which was done accordingly.

Lord High Steward. Gentlemen of the House of Commons, You will be pleased now to proceed.

Sir William Yonge.

My Lords,

AS I was commanded by the House of Commons to lay before your Lordships, the Articles of Impeachment of High Treason against the noble Lord at the Bar, which have been just read,

So it now becomes my Duty to open the general Charge to your Lordships, together with some of the Inducements which prevailed with the Commons to think this Accusation necessary.

In the first Place, my Lords, I cannot omit observing, That as every Impeachment is said to be in the Name of all the Commons of the Land,

So this may most emphatically be declared to be so, as I am confident there is not a single Subject of the United Kingdom of *Great Britain*, who has not demanded Justice against this notorious Offender; excepting a few Miscreants, who may still be intestine Enemies to his Sacred Majesty on the Throne, his Royal Family, and by necessary Consequence, to the Religion and Liberties of their native Country.

The Crime of High Treason has at all times been considered, in the most civilized and in the most free Countries, as an Offence of the blackest Dye; and as such, the severest Punishments have been inflicted on such Offenders; and this, my Lords, with the greatest Reason and Justice.

Government was instituted for the Happiness and Security of Mankind, to rescue them from the Rapine and Disorder,

The Murders and Destructions, which must be the Consequences of Anarchy and Confusion.

Treason tends to destroy all Government, whether Monarchical, or that of a Commonwealth of any Denomination; to introduce Confusion and Bloodshed: And if he that murders one Man, is by the Laws of God and Man to be punished with Death, how much more every Rebel, every Fomenter and Abettor of Rebellion, who is a Murderer of Thousands?

By our Law, He that but imagines the Death of the King (in whose Person all the Bands of Society are united), and discovers his wicked Imagination by any Overt Act, is a Traitor: If this be proved against the Prisoner (as I doubt not it will be to your Lordships full Satisfaction), the noble Lord at the Bar is then a Traitor.

Raising Rebellion, and levying War, is another Species of Treason by our Law, or rather the plainest and most notorious Overt Act of imagining the Death of the King: And we doubt not to prove the noble Lord at the Bar to be a Rebel.

It is High Treason by Statute, to correspond with the Pretender to his Majesty's Crown, or with the Sons of the Pretender, or those employed by them.

But we shall amply prove it to your Lordships, That the noble Lord at the Bar has boasted, that he received a Patent as Duke from the Pretender; an Authority as Commander in Chief of the *Highlands*; is a General Officer in the Pretender's Service; and that he has openly corresponded with the Son of the Pretender, and his Followers, then in open War against his Majesty within this Realm, and given them Harbour, Encouragement, and Assistance.

Your Lordships have, I am persuaded, given due Attention to the Preamble, as well as to the Articles that have been read.

The Commons have there asserted, That, most unfortunately for this Nation, we have amongst us an obstinate, bigotted, restless Faction, who are not, and will not be, contented with the Enjoyments of Liberty, Peace, and Prosperity:

But who are perpetually watching for every favourable Opportunity, to overturn our Constitution, and the present happy Establishment.

This is not only their Principle, but has been their constant Endeavour, at different times, from the late glorious Revolution to the present Hour,

By Plots and Conspiracies, by fomenting frequent Rebellions, by inviting our Enemies to invade us, and by that detestable Crime of Assassination.

These Facts require no Proof. Our Annals will afford, and your Lordships Memories will furnish, numerous Instances of some or other of these Attempts.

But, my Lords, we shall, in the Course of our Proceedings, make it appear, That the noble Lord at the Bar, so long as Seven or Eight Years ago, joined in an Association with other Traitors, under their Hands and Seals, for dethroning his present Majesty, and placing the Pretender in his stead.

Not contented with this, the Association so signed and sealed was transmitted by a faithful Hand to the Cardinal, then Prime Minister of *France*,

In order to excite those our natural Enemies to give their Assistance, and to invade this Country with a foreign Force, even at a time when we were in actual Peace with that Kingdom;

His Lordship, and the other Conspirators, justly imagining, That this might be a favourable Conjuncture, a War with *Spain* at that Time being commenced;

Wisely concluding, That when we were engaged with one Branch of the House of *Bourbon*, the other would not long be neuter.

So early was his Lordship in fomenting a Rebellion at home, and inviting an Invasion from abroad.

Nor was he only early in promoting, and active in supporting, but zealous in endeavouring to prevent the Extinction of the late Rebellion;

For, when the Rebels were broken, and their Chiefs Fugitives from the Victory at *Culloden*, his Lordship found Means to be present at a sort of Council of War held by those Chiefs;

Where he earnestly encouraged them, to reassemble the Remains of their scattered Troops, and to revive the War:

Which was resolved on, and might have happened, had not the Vigilance of his Royal Highness the Duke prevented its taking Effect, thereby shewing his own superior Abilities in using, as eminently as his Courage and Conduct in obtaining, Victory.

The noble Lord at the Bar was, at the Time of this Victory, within Fourteen Miles of *Inverness*.

What would have been the Conduct of any loyal Subject on this Occasion? Would he not have hastened thither, to congratulate his Royal Highness on the Success of that glorious Day?

What was the Conduct of the Prisoner at the Bar?

He received the young Pretender, flying from his Defeat; embraced him with open Arms; assisted him in his Flight.

And the next News we hear of his Lordship is, that he fled from Justice himself, and appeared at the Meeting of the Rebel Chiefs I have just now mentioned.

This is the Substance of our Charge. And when I have said thus much, your Lordships will not be at a Loss for the strongest Inducements to the Commons to impeach. But, my Lords, there are other Inducements.

The Commons look upon it not only as their Duty, but as a Duty of the greatest Importance to this Nation, to take this Opportunity to let the World know, by the unanimous Voice of the Representatives of all the Commons of *Great Britain*, their sincere and hearty Abhorrence of every Attempt to disturb his Majesty's auspicious Government, either from abroad, or at home:

To convince all the World, That we are determined to be a Free People, under our own King:

That we are determined to continue a Protestant Nation;

And that we never will suffer an arbitrary Government, or Popish Superstition, to be imposed on us by any Power whatsoever:

That we will give convincing Proof to all *Europe*, that we are not that dissatisfied, disaffected, turbulent People, they have been vainly made to believe,

By having adopted as Truths, all the seditious, discontented, and traiterous Libels, which have at different Times, and on various Occasions, been industriously scattered through the Nation;

And that our Enemies did foolishly and ignorantly imagine these Libels and Calumnies to be the general Sense of the People.

Permit me, my Lords, to put you in mind, that That scandalous Declaration of the young Pretender published at *Edinburgh*, which your Lordships, with the hearty Concurrence of the Commons, ordered to be burnt by the common Hangman, was but a short Abstract of those very Libels.

This Belief of our Enemies was their Folly. The relying on it has proved, Thanks be to God, their Destruction.

Had they not been thus infatuated, would such a Nation as *France* have attempted, or thought it possible, to over-run, much more to conquer, a brave and warlike People, with a Handful of Men, so poorly provided at first, and throughout so weakly supported?

To convince Mankind of these false and vain Imaginations, was one of the Inducements which prevailed with the Commons to vindicate the People they represent from these vile Aspersions, in the most solemn manner, in Presence of your Lordships and this great Assembly.

But, my Lords, the Body of the People themselves, from the highest to the lowest, have vindicated their own Loyalty and Honour.

After a small Body of the regular Troops had received a Check, when it was apprehended the Rebels would venture to march Southward, what a noble Spirit immediately arose throughout the Nation!

Not an artificial false Clamour for Liberty, but the true old *British* Spirit of Liberty, the true REVOLUTION SPIRIT, that exerted and signalized itself, out of Hatred to Popery and arbitrary Power.

And, Thanks be to God, it still remains in its full Vigour amongst us; it cries aloud in our Streets for Justice against those that would have made them Slaves and Papists; it cries aloud for Justice against the Prisoner at the Bar.

Calumnies

Calumnies of the like Nature preceded the great Rebellion in the Year 1715; and most justly may our present gracious King now say, in the Words of his Royal Father, of glorious Memory, to both Houses of Parliament:

“ My greatest Comfort is, That I cannot reproach myself with having given the least Provocation, to that Spirit of Discontent and Calumny, that has been let loose against me, or the least Pretence for kindling the Flame of this Rebellion. Let those whose fatal Counsels laid the Foundation of all those Mischiefs, and those whose private Discontents and Disappointments, disguised under false Pretences, have betrayed great Numbers of deluded People into their own Destruction, answer for the Miseries in which they have involved their Fellow-subjects.”

I have chosen to make this Quotation, because it will appear to your Lordships, that the noble Lord at the Bar, since his being taken, has frequently declared,

That one of the Causes of his late Behaviour, was Revenge to the Ministry, for having taken from him the Command of an Independent Company, which he enjoyed.

Now, my Lords, if there is such a Principle, that Men must be paid for being loyal, and hired to live free and happy,

Whom no Sense of Religion, or Love to their Country, can engage,

Whom no Ties of Conscience, Oaths, or Abjurations, can bind:

If there is such a Principle, it is the lowest, the basest, and the meanest, as well as the most mischievous and wicked, that can enter into the Heart of Man.

My Lords, the Commons have still further Inducements for impeaching this *particular* Criminal.

Your Lordships have already done national Justice on some of the principal Traitors, who appeared in open Arms against his Majesty, by the ordinary Course of Law.

But this noble Lord, who, in the whole Course of his Life, has boasted of his superior Cunning in Wickedness, and his Ability to commit frequent Treasons with Impunity,

Vainly imagined, that he might possibly be a Traitor in private, and a Rebel only in his Heart,

By sending his Son, and his Followers, to join the Pretender, and remaining at home himself, to endeavour to deceive his Majesty's faithful Subjects:

Hoping, *he* might be rewarded for his Son's Services, if successful; or *his Son* alone be the Sufferer for *his* Offences, if the Undertaking failed. Diabolical Cunning! Monstrous Impiety!

My Lords, Secret Criminals of this Sort, and of all others, it is the peculiar Business of the Commons to explore, and to bring to Justice.

This is the *first* and *great* Offender: But should hereafter other concealed Criminals appear, who encouraged and supported the late Rebellion; but who, either through the Cowardice of their Hearts, or Fondness for their Estates and Riches, durst not join the Rebels,

I make no doubt, but the Zeal and Loyalty of the Commons will prompt them with equal Ardour, to bring them to condign Punishment.

Having thus opened to your Lordships the Nature of the Crimes of which the noble Lord at the Bar is accused, and several Inducements the Commons had for this Accusation, it is needless for me to awaken your Lordships Attention, by enumerating the Miseries which the late Rebellion occasioned, or the utter Ruin which must have attended its Success.

It is too fresh in your Lordship's Memories to need any Aggravation: And I pray to God, that your Lordships, this Great Assembly, and the whole Nation, may for ever remember it.

It has too often been the Misfortune of this Country to have been involved in Civil Wars: A Calamity of all others the most to be dreaded.

In antient Times these unhappy Divisions have arisen from Contests between Princes and great Men, without the least View to the Liberties, or the Benefit, of the People:

Let who would be Victors, they were sure to be Slaves, and only fought for different Masters.

The Power and Imperiousness of *Rome* they were sure to submit to, while each Contender exerted his Interest there, for the Confirmation of his Title.

Henry the Seventh united the Two Branches of the contending Families: During his Reign, and those that followed; the Commons began to grow rich, and consequently powerful; they became jealous of their Liberties, and of their Property.

When they had something of their own to lose, they were too wise to risk their Fortunes, or their Lives, in vain Quarrels of the Powerful and the Great: They shook off the Yoke of *Rome*; Laws were enacted to limit the Power of the Crown, and the Days of Freedom began to dawn.

Still there was another Struggle, when the Crown began to incroach upon those Laws, and exert despotic Power. These virtuous Struggles at first soon degenerated into Faction; Civil War and Anarchy ensued, and ended (as it always will) in the most absolute Tyranny.

The Restoration re-established the Form of our Government; and new Privileges were gained for the People.

But, in the next Reign, the impatient Lust of Power, and the abject Bigotry of the Prince, produced the happy Revolution. The glorious Prince of *Orange* came to our Rescue. The People received him with open Arms; and then, and not till then, was established our present free Constitution.

Pardon, my Lords, this short Deduction, and be pleased to reflect, how odious and detestable the late unprovoked Rebellion must appear.

A Rebellion calculated to overturn this Constitution, so hardly acquired, and so carefully preserved, by all the succeeding Princes to this very Hour!

A Rebellion against our present indulgent Sovereign, whose Study has been the Happiness of his People; under whom the boldest Rebel cannot complain of the least Violence or Oppression!

The Laws of the Land have had their full and free Course, except where their Rigour has been restrained by the Royal Mercy.

Under *such* a Prince, and for the Destruction of *such* a Constitution, has the noble Lord at the Bar conspired and rebelled.

Be pleased then to remember the Depredations, the Bloodshed, that spoiled and stained those Countries through which the Rebels passed.

Let us remember the Distress of Public Credit, the Stagnation of Trade, the Loss of our Manufacturers, the reasonable, yet dangerous Apprehensions, which seized on the Minds of all the loyal Inhabitants of these great and opulent Cities of *London* and *Westminster*.

Let us remember the Loss of the Lives, the Blood, and the Limbs, of those gallant and brave Officers and Soldiers, who conquered, for our Sakes, in the famous Battle of *Culloden*. They are, and will be, a perpetual Memorial for whom, and by whom, they suffered.

Let us all remember these Calamities, and endeavour, as it is our Duty, to prevent the like Evils for the future; by doing Justice on Criminals; by putting a Stop to the Growth of Popery, that bloody Religion; by preventing the Education of our Youth in those Principles, which the Prisoner at the Bar has instilled into his Son; and by lessening the Power in those Hands, which have ever been ready to disturb this Government.

These, or such other Provisions, as the Wisdom of the Legislature shall suggest, are necessary to prevent the future Mischiefs, which may arise from the frequent Disturbance of Government.

While we are in this State, 'tis in vain for this Country to hope to make the Figure she ought to do, or retain her due Dignity among the States of *Europe*, or to preserve the Peace, or hold the Balance, among foreign Powers.

If, while her Armies are employed abroad to humble the Pride of an assuming Nation, her Fleets to protect our Trade, or to annoy our Enemies,

If then our Troops are to be called home to preserve domestick Peace, and our Fleets to prevent Invasions invited by these Patricides,

What Ally can depend on our Assistance? or what Pretence can we have to be Umpires in the common Cause of *Europe*?

Britain, united within herself, may, from her Situation, her Wealth, her Naval Power, and the Bravery of her Troops, justly claim that Title:

But divided, torn to Pieces by civil Discord, must fall under the ancient Reproach of this Country, and, while we are contending among ourselves, become an easy Prey to our most inveterate Enemies.

Let us now, my Lords, turn our Thoughts from these gloomy Reflections, which the Time and Circumstances of the late unhappy Rebellion of Necessity must furnish: And

Let us then call to mind, with Thankfulness, the good Providence of God, which put an End to these Calamities, and a glorious Period to our Terrors.

Let us acknowledge, with Duty and Gratitude, all his Majesty's Labours for the Safety and Happiness of his People.

And let us remember, with Honour and Praise, his Royal Offspring, who, by his Courage and Conduct, has secured and established his Majesty's Throne, your Lordships Honours, our Liberties and Privileges, and the Protestant Religion.

Thus ended this wicked and unnatural Rebellion, of which the noble Lord at the Bar will appear to your Lordships to be one of the first Contrivers and Promoters, and a very considerable Support.

All

All I have said, I know, will avail nothing with your Lordships, unless the Evidence we shall bring against the noble Lord at the Bar be clear and full, as we doubt not it will appear to be.

In Cases where Life is concerned, it is painful to be a Judge ; it is uneasy to be the Accusers : But there is a Duty incumbent on both.

I know such is the generous Compassion of your Lordships noble Hearts, that you will acquit with Pleasure, but condemn with Reluctance.

And as I am persuaded, from the Fulness of our Proofs, the latter will be your Lordships Judgment, give me Leave to add a few Words to lessen that Concern, which your Lordships may feel as Judges, and we as Accusers.

When I look on his Lordship at the Bar, I pity his Age and Infirmities ; but, when I consider, that, at *his* Years, Pride, Vanity, Avarice, or Ambition, are so rooted in his Heart, as to tempt him to risk his Honour and Estate, to sacrifice the Religion and Liberty of his Country to those mean Passions, that Pity is mixed with Indignation.

But when I reflect on his having been already pardoned for this very Crime ;

That he has been amply rewarded by his Majesty's Royal Father, and intrusted by his present Majesty in preserving the Peace of those *Highlands* where he rebelled ; I own I feel the strongest Resentment of such heinous Ingratitude.

The bringing his grey Hairs with Sorrow to the Grave seems to be a Distress to human Nature ; but when we consider how different the Distress when that Expression was first used, and that the Prisoner at the Bar is not brought into that wretched Circumstance by the Misfortune or Loss of a darling Child, but by sacrificing his eldest Son to *his own* Ambition, and by endeavouring to save his own worthless Life by *his Son's* Destruction, it must almost harden the most tender Breast.

One Word more, and I have done.

When your Lordships look towards the Bar, you will please to reflect, that had the Design of the noble Lord, who stands there, had its Effect,

It would probably have happened to many of your Lordships noble Body, who should not have perished in the Defence of your Country, to have stood in that very Place ;

While his Lordship, with a Number of mock Peers, had sat in Judgment on your Lordships, for the very Crime for which he is now accused.

Thus far, my Lords, I have gone, in pursuance of the Trust reposed in me by the Commons. I am now, my Lords, for myself, humbly to implore your Lordships Indulgence for any Errors I may have been guilty of, either in Matter, or in Words. If I have omitted any thing material, I am sure it will be supplied by the great Abilities of those who are to follow me, and who will lay before your Lordships the particular Evidence to support our Charge.

Lord Coke.

My Lords,

I Am likewise commanded by the House of Commons to assist my Honourable Friend in maintaining the Articles of Impeachment against the noble Lord at the Bar : And, my Lords, if I commit any Errors in what I shall offer to your Lordships, I hope I shall meet with your Lordships Indulgence, and, in Return, I promise you they shall not be wilful. It is a Business, my Lords, to which I am an entire Stranger ; nor should I have undertaken it in a Case of so high Importance, if I did not think, that my Duty to my Country, as well as my Allegiance to his Majesty, to which I shall ever be faithful, equally called upon me to be instrumental, if I could, to find out concealed Treasons, and to bring the Contrivers of them to Justice, as to have ventured my Person and Fortune, if necessary, when the Rebels were in the Field. What I shall chiefly endeavour to prove to your Lordships, is, that the last Rebellion was not the Effect of Chance only, entered into by a few rash inconsiderate Men, without Thought or previous Design, but the Result of long-considered and well-weighed Consultations, and of Schemes not so ill concerted, as to make the Success either impossible, or without some Degree of Probability in them : And, my Lords, the Reason why I choose to mention this general Design to your Lordships is, that, though I am not very old, I have twice seen this Country in very great Danger from the Disbelief of *Jacobitism* prevailing in it. In 1743, I, with Grief, remember, when a Message was sent from the King to a certain Place in this Kingdom, that an Invasion was projected from *France*, what popular Declamations were made to shew, that the Scheme was impracticable, and that it ought to be looked upon only as a Terror thrown out by the Ministry ; because, as there was neither the Colour nor Appearance of Truth in it, there could be no Reality. And, in the Beginning of the last Rebellion, there was a Disbelief prevailed even among those who ought to have been more certain of the Truth : But that was not the Case of the Prisoner at your Bar : He did believe it ; he sent one of his chief Agents into *Lochaber*, to the young Pretender,

Pretender, to go and receive his Commands, and ordered him to express the greatest Satisfaction at his being come over. He did not content himself with beginning the Rebellion then; but, in 1736, an Association was sent by him to *Rome*, signed and sealed by many of the People of that Country, to invite the Pretender then to come over; and that was afterwards carried to *Paris*, and shewed to the Cardinal; and, I believe, met with Approbation at both those Places.

My Lords, I say nothing to aggravate the Case of the Prisoner at your Bar: He is already oppressed with Misfortunes enough, and it is not in my Nature, I hope, to add to them. Nor should I, my Lords, make the following Observation, did I not think myself obliged in Justice to an unfortunate young Man, whom this noble Lord has forced into the Rebellion: He did write a Letter, that he was afraid the disobedient Behaviour of his Son, would bring down his grey Hairs with Sorrow to the Grave; and therefore it will not appear astonishing to you, that when he had forgot that tenderest Tie of human Nature, the Love of a Father to his Child, so far as to desire to save the wretched Remains of a Life almost worn out, by the Destruction of his own Son, that he should forget his Allegiance to the Son of a King who saved his forfeit Life; the Remainder of which he has since employed in endeavouring to overturn and destroy his Family, and the Government established in him. I shall therefore conclude with my Honourable Friend, in saying, that we are ready to make good our Charge against the Prisoner at the Bar.

Mr. Attorney General (*Sir Dudley Rider*).

My Lords,

I Have likewise the Commands of the House of Commons to assist in the Prosecution of the noble Lord at the Bar.

The Charge hath been fully stated and opened by the Managers who have spoke before me. The Prisoner has denied every Part of it, and thereby put the Proof upon us, to be made out, not, as he rightly says in his Answer to the Articles, by Facts aggravated by Skill and Oratory, but by credible and unexceptionable Witnesses, in a plain and legal Way; against which he will have the full Benefit of any just Defence he can make.

I shall therefore avoid dwelling upon those many Circumstances of Aggravation, either in respect to the Rebellion in general, or to the noble Prisoner's own particular Conduct in it, which will necessarily occur in the Progress of this Prosecution: The Honourable Managers, who have preceded me, have very properly pointed them out to your Lordships. They have had their Effect already; all that Effect which your Lordships Wisdom and Justice would suffer them to have; all that the Commons would wish them to have: They have awakened your Lordships Attention, if that could possibly be wanting in the least Degree on such an Occasion: They have balanced that Compassion, which the Age, Appearance, and Quality of the noble Prisoner, must naturally raise in your Lordships humane Breasts; that is, they have cleared the Way for that Justice which the Nation calls for, and the Commons of *Great Britain*, in behalf of themselves, and the People whom they represent, now demand at your Lordships Bar.

All therefore that I shall offer for your Lordships Consideration, will be a plain Narrative of Facts, with the Nature of the Evidence to prove them, and some short Observations, to shew the Force of those Facts to maintain the Charge, which the Commons of *Great Britain* have undertaken to make good.

The Facts will be very numerous, to be proved by a Variety of Witnesses and Writings; and therefore must necessarily, in the Course of the Evidence, lie intermixed. I shall therefore, in the Opening, endeavour to disentangle them; and, that your Lordships Attention may be the more easily fixed, and the Facts, as they shall arise in the Evidence, be the more readily applied to the several Parts of the Charge, I shall divide them into Three distinct Periods of Time.

Those which happened precedent to the Pretender's Son's Landing.

What happened after that Time, and before the Battle of *Culloden*.

What arose since that happy Event.

And within each of these Periods, your Lordships will find many Things, which it will much concern the Prisoner at the Bar to give a satisfactory Answer to.

The First will open to your Lordships a wicked and traiterous Scheme, begun and carried on for many Years, for bringing over the Pretender, by the Assistance of a Foreign Force, in which his Lordship will appear to have had a principal Hand.

The Second will include the more immediate Scene of Action in the late wicked Rebellion, and the particular Parts which the Prisoner took in it.

The Third will shew him in the Circumstance of a Defeat, and the Measures he then thought proper to take; and, in every Part of this whole Scene, he will appear plotting, associating

associating, and supporting all the Steps that were taken for subverting this happy Establishment, dethroning his Majesty, and substituting a Popish Pretender in his room.

To begin with the First of these Periods: And here I shall be under a Necessity of going some Years back, in order to lay before your Lordships a View of those traiterous Schemes that have been set on foot, and prosecuted for some time past, in order to prepare the Way for, and bring on, the late Rebellion.

As soon as the War with *Spain* was declared, the Pretender, and his Agents, thought that a favourable Opportunity offered to promote his Interest; and a Project was immediately set on foot by several of his Friends in the Northern Parts of *Scotland*, for bringing in the Pretender by the Assistance of *France*; and Seven of the Chiefs of them entered into an Association for that Purpose. The Prisoner at the Bar set himself at the Head of them, and himself, together with the Earl of *Traquair*, Sir *James Campbell* of *Auchinbreck*, *Cameron* of *Lochiel* the younger, *John Stuart* Brother to Lord *Traquair*, Lord *Perth*, and Lord *John Drummond*, signed and sealed an Association in Writing, in which they engaged to venture their Lives and Fortunes, to restore, as they called it, the Pretender, whom they stiled their King, and his Family. They agreed to send one *Drummond*, alias *MacGregor*, of *Bochaldie*, a Relation and intimate Friend of the Prisoner's, to *Rome*, in order to have the Scheme for bringing over the Pretender digested there, and from thence carried to *Paris*, for completing the Execution of it. It was there to be delivered to Cardinal *Fleury*, then Prime Minister of *France*, with a Memorial, pressing, in the strongest Terms, for her Assistance.

In order to engage the *French* Court, he was to represent the great Interest and Strength of the Conspirators in the *Highlands*; to assure the Cardinal, that they could raise 20,000 *Highlanders* for the Service, and wanted nothing but a few *French* Troops, and some Money, to secure the Success. The Conspirators, at the same time, sent over a List of many other Heads of Clans, who, they pretended, would join in the same Design.

Drummond accordingly went over, and carried with him the Association and List; and, after he had obtained the Sanction of *Rome*, and the Pretender, he came to *Paris*, where he was introduced to the Cardinal by one *Semple*, whom they called Lord *Semple*, an Agent at that Place for the Pretender. He delivered the Association and List to the Cardinal, with an Assurance, that any of the Seven, who had signed the Association, would come over, and confirm it in Person, whenever he desired it.

Any Scheme to disturb the Peace of this Nation is but too acceptable to that Court at all times. The Cardinal received it with great Attention and Encouragement, and promised their Assistance, as soon as the Conspirators could shew a reasonable Prospect of Success. *Drummond* continued at *Paris*, and kept a constant Correspondence with those who had joined in the Association. Nothing, however, appears to have been finally resolved on, till about the latter End of the Year 1742, or the Beginning of 1743, when the Court of *France*, finding how necessary it was to their Views of oppressing *Europe*, to take off the Weight of our Assistance from our Allies upon the Continent, thought it worth their while (though then at Peace with us) to enter seriously into this Design; and *Drummond* was, about that time, sent over hither by the Cardinal, to assure the Conspirators, and the rest of the Pretender's Friends in *Scotland*, that, if they could procure Encouragement from *England*, they might depend upon being assisted by *France* with an Invasion the Autumn following.

Drummond came accordingly over to *Edinburgh*, where he had a Meeting with the Earl of *Traquair*, *Lochiel* the younger, and *Chun*, and gave them an Account of his Negotiations, and particularly of his last Message and Promise from the Cardinal. Upon this, it was agreed, that the Earl of *Traquair* should go immediately to *London*, and try what Encouragement he could meet with there. The Earl went accordingly, and *Drummond* accompanied him. The Earl, after some time spent in *England*, returned to *Edinburgh*, and assured his Friends there, that the People here were well inclined to the Pretender, and would join in the Design, provided they could depend upon Assistance from *France*.

About the same time, *Drummond* went over to *Paris*, to satisfy the Cardinal of the Success of his Negotiation; and he gave him such Satisfaction, that a Project for an Invasion was soon after agreed on. The Plan was, that the *French* should send over 3000 Men, under the Command of Earl *Marsbal*, who were to be joined with large Bodies of *Highlanders*, which the Conspirators had undertaken to raise. 1500 of the *French* were to go directly to *Inverness*, where the Prisoner at the Bar was to join them with his Clan of *Frasers*; the remaining 1500 were to land in the West, near Sir *James Campbell*'s, who was to go to the Isle of *Mull*, and raise the Clans there, who all together were to march and join the *Frasers*, and the other Body of *French*. At the same time, 12,000 *French*, under the Command of Count *Saxe*, were to march to the Coast of *Flanders* and *France*, and from thence embark; and land in *England*, within Two or Three Days March of *London*.

As soon as this Scheme was agreed upon, *Drummond*, about the Middle of the Summer 1743, wrote Letters to the Earl of *Traquair*, to inform him of the Resolution that had been taken; to direct him to acquaint his Friends of it; and to assure them, that it would very soon be put in Execution. The Earl communicated this Intelligence to *John Murray* of *Broughton*, *Lochiel*, and several others, who immediately sent the same Mr. *Murray* to *France*, in order to settle Matters beforehand for the Execution of it. He went over accordingly; but the Death of the Cardinal, about that time, suspended the Prosecution of it for a little while. As soon as he arrived at *Paris*, he was assured, by *Drummond*, of the Cardinal's good Intentions and Zeal for the Pretender's Cause; and that nothing but his Death could have prevented the immediate Execution of it; and that the Cardinal's first Design was, that the Army under the Command of *Maillebois* should be employed in it; but that some Persons about the King of *France* had prevailed upon him to order that Army to march towards *Hanover*. *Murray* of *Broughton* was then introduced to Cardinal *Tencin*, and afterwards to M. *Amelot*, who assured him of the late Cardinal's Sincerity in the proposed Invasion; and that the *French* King had ordered him to acquaint the Gentlemen, who had entered into the Association, that he had the Pretender's Interest very much at Heart, and would certainly execute the Scheme which had been settled, as soon as his Affairs would permit. M. *Amelot*, at the same time, entered into a Discourse concerning the Number of *Highlanders* that might be expected to join them.

With these Assurances *Murray* returned to *Edinburgh*, and made a Report of his Proceedings to the Earl of *Traquair*, Lord *Perth*, and others of the Pretender's Friends. *Drummond* was sent at the same time, with the like Assurances, to the Pretender at *Rome*, in order to engage him to send the young Pretender to come and put himself at the Head of the Expedition. *Drummond* soon after came back to *Paris*, and from thence to *London*, in order to settle Matters here for the intended Invasion, and returned again to *Paris*; from whence he acquainted the Earl of *Traquair*, by Letter, that the *French* Court had now settled every thing for the Invasion; that it would be executed immediately; and that the Pretender's Son was come from *Rome* to accompany it.

This was in *January* 1743: And, in *February* following, an Invasion was attempted by a large Embarkation from *Dunkirk*, where a great Number of Transports were got ready; many of the Troops actually embarked, with a Design to have come up the River of *Thames*; and a Fleet of Men of War actually sailed from *Brest* to support the Descent, or to divert our Fleet, while an Army of 12,000 Men might land without Interruption.

Nobody can have forgot how that Expedition was happily disappointed, by the good Providence of God, and the Vigilance of his Majesty; nor what Terror it struck while it was depending, at a time that our own Troops were necessarily engaged on the Continent, in the Defence of our own and the Liberties of *Europe*, and consequently when we had so few left to defend ourselves at Home.

After this Disappointment, no Letters appear to have come from *France* for a considerable time; which made the Conspirators, and their Friends here, very uneasy; and the Earl of *Traquair* engaged *Murray* to go again to *Paris*, in order to know in what Situation their Affairs stood there: But, before he was actually gone, a Letter came from *Semple*, to account for, and excuse the Miscarriage of, the Invasion, and desiring, that fresh Assurances might be sent from the Pretender's Friends both in *England* and *Scotland*, in order to engage the *French* Court in a new one.

This did not prevent *Murray*'s intended Journey; and, in *June* 1744, he went over to *Paris*, where he was introduced to the Pretender's eldest Son, at the House of one *MacDonald* a Banker, and had soon after a Second Meeting with him. The young Pretender then assured *Murray*, That the *French* had been very serious in the Invasion, which had been disappointed by nothing but Wind and Weather, and other inevitable Accidents: But, however, he had the strongest Promises, both from the *French* King, and the Ministry, that the Scheme should be put in Execution the then next Summer in the Year 1745. And, as for himself, whether it was or not, he was determined to come over, if he brought but a single Footman with him: And, though *Murray* represented to him the Rashness and Danger of such an Attempt, he was so fully satisfied of Assistance from the *Highlands*, whenever he appeared in Person, that he would, in all Events, come over at that time.

Murray returned to *Scotland* from *Paris*, and communicated what passed to the Earl of *Traquair*, *Lochiel*, Lord *Perth*, and others of the Pretender's Friends; and, at the same time, brought along with him several Letters from the Pretender's Son, but with blank Addresses, in order to be delivered to such as it should be thought proper, when *Murray* came over; and they were accordingly, soon after, delivered to such as, it was apprehended, would make the best Use of them.

The Time, however, running out, and no Preparations yet appearing in *France* for an Invasion, the Pretender's Friends, who were acquainted with the Design, began to fear the

French

French would deceive them; and, in *June 1745*, *Murray* received a Letter from the Pretender's Son, in which, without taking Notice of any Invasion from *France*, he informs *Murray*, that he was determined himself to come to the Northern Part of *Scotland* immediately; and desired his Friends might be informed of it, and ready to join him, with all the Forces they could raise. He tells him, That it would be the Latter-end of that same Month; and appoints the Place where he designed to land, together with the Signals that were to be given and taken.

This Letter was immediately communicated to the Pretender's Friends in the North, and, amongst the rest, to the noble Lord at the Bar. So unexpected a Resolution, without mentioning any Assistance from *France*, much surprised them. They thought it, as was natural, rash, precipitate, and dangerous, to come without Force; and therefore determined, most of them, if they could not prevent his Landing, to advise him to return, and wait till he could be better prepared. About a Fortnight after, the Pretender's Son actually arrived, and landed in the North-West Part of *Scotland* upon the 25th of *July*, 1745.

Your Lordships will permit me now to make a little Stand. I have stated these Facts as a short View of the Commencement and Progress of several wicked and treasonable Correspondence, Plots, and Schemes contrived and carried on from the Year 1740, for bringing over the Pretender, by the Assistance of the Power of *France*.

I have hitherto, my Lords, but just named the noble Prisoner at the Bar in the Account I have given of them; and I have avoided it on purpose, that when your Lordships should have before your Eyes, in one View, the general Plan of that Series of Treasons, which have been contriving, and, in Part, executing, for so many Years, I might the more easily point out to your Lordships, as it were in a Map, the particular precise Parts, which the noble Lord acted in them; which is what I shall now apply myself to.

And, in order to do this the more clearly and agreeable to the Evidence which will be produced, I shall be under the Necessity of going back to some yet earlier Parts of his Life; and which, my Lords, I should not do, if your Lordships would not necessarily, in the Course of the Evidence, see the Prisoner himself taking Pains to connect the early with the latter Parts of his Life, in order to prove the Uniformity and Consistency of his Conduct, all tending to, and uniting in, one great Centre, the overturning the Protestant Succession, excluding or dethroning his Majesty, and his Royal Father, and setting up the Pretender to their Throne in their room.

So long ago as the Reign of Queen *Anne*, when the Nation was involved in a War with *France*, and Invasions from thence were continually set on foot, and it became material for the Pretender's Service to arm his Friends in the Northern Part of the Island, the Prisoner, who had been, from his Youth, bred to War, accepted of a Commission from the Pretender of a General Officer. It must be owned, that it does not appear, that the Prisoner made any particular Use of it; and the First time any Opportunity did offer, when the Rebellion broke out on the Death of Queen *Anne*, the noble Lord at the Bar did important Services to his late Majesty. He himself will likewise admit, that he was amply rewarded for them. But he seems very soon to have repented of those Services, even while he was in the full Possession of the Reward of them.

In 1719, when a *Spanish* Invasion was undertaken in favour of the Pretender, and *Spanish* Forces were actually landed in the North, the Prisoner thought proper to engage in it; and, while the Earl of *Seaforth* was raising his Men to assist in it, the Prisoner himself wrote a Letter to that Earl, with a Promise to join him with his Clan; but, before he had actually done it, that Attempt was defeated.

From that Time, till the Year 1736, the Managers don't take upon themselves to state to your Lordships any thing concerning his Conduct, but that general Account, which your Lordships will find him giving of himself in his own Letters, That he had, ever since he had the Use of his Reason, been the most faithful and zealous Subject to the Person and Interest of the Pretender.

But, in that Year, when one *Roy Stuart*, who had escaped out of Prison, to which he had been committed for High Treason, and been afterwards harboured in the Prisoner's House, then High-Sheriff of the County where he had been imprisoned, was going to the Pretender to *Rome*, the noble Lord sent by him an Assurance to the Pretender of his constant Fidelity even to Death; and desired a Commission from him to be Lieutenant-General of the *Highlands*, and to have a Patent of Dukedom, which he had before solicited, expedited, and which he claimed as a Matter of Right for the Services he had done that Cause.

In the Year 1740, when an Invasion was projected, the noble Lord was not only one of those that signed the Association, and corresponded with the Persons that negotiated it beyond Sea, but himself proposed it, and seems to have been the original Projector.

In the Year 1743, when the Invasion was actually resolved, and a Person of Figure and Interest was necessary to conduct it in the *Highlands*, the Prisoner was pitched upon as the most proper for that Purpose, and accepted Two Commissions from the Pretender at *Rome* in *December* 1743, one to be Lord-Lieutenant of all the Counties North of *Spey*, and the other to make him a Lieutenant-General. He likewise, about the same time, obtained the Patent, which he had been long soliciting, for creating him Duke of *Frazer*.

And, though the Disappointment of that Expedition prevented his immediate Use of those Powers, they did not lie idly by as a private Ornament to his Person, and to gratify his Vanity only: They were made use of by him to propagate the Principles of Treason and Rebellion; to sow the Seeds of Disloyalty to his present Majesty, and his Government; to discipline his Dependents in the Service of the Pretender, and make them ready, whenever his Master's Projects were ripe for Execution.

He was, as your Lordships will see him expressing himself in his Letters, always the most zealous and active Partisan that the Pretender had in those Parts. He was, in his own Words, the Life and Spirit of the Pretender's Affairs in that Country: He made it, as he says, his sole Business to keep up the Hearts of his King's Friends, though it was both fatiguing, troublesome, and expensive; and appeals for the Truth of it to the Knowledge of all the Gentlemen in the Pretender's Interest in the North. He did, as he expresses himself in another Letter, more Service to the Pretender's Cause, than any one of his Rank in *Britain*.

He constantly made it his Business, as he says in another, to promote his Master's Interest, and to engage faithful Subjects to him; so that he had done, as he expresses in a still higher Strain of Language, more against this Government than would hang Fifty Lords, and forfeit Fifty Estates.

I have now pointed out to your Lordships the particular Share the noble Lord will appear to have had in the Steps towards the late Rebellion; in which you must have observed him to be a most active Friend to it: I shall now open to your Lordships a State of the Facts that affect the Prisoner since the young Pretender's Landing, which was, as I mentioned, upon the 25th of *July* 1745.

Notice was immediately sent of it to the Chiefs of the Clans known to be in his Interest; and the Prisoner at the Bar, was one of the first to whom it was communicated. The Conspirators, who expected an Attempt at the Head of a *French* Army, were surpris'd at his coming in a single Ship, without Soldiers, and without any material Friends, or even many Servants, accompanying him; and were, at first, shocked at the Danger of a Design so prematurely executed. However, some of the Clans came in soon; and the Prisoner at the Bar seems to have early determined to have done so too, not, indeed, at first, in Person, which he excus'd from his Age, and supposed Infirmities, but by sending his Son, at the Head of his Clan.

For that Purpose, he directed the Master of *Levat* his Son, who was then at, or but just come from, the University of *St. Andrews*, to get ready: He likewise directed the inferior Heads of the Clan of *Frasers*, to send in Lists of their Numbers and Names; with severe Threats on such as neglected, or gave him incorrect ones.

He ordered the Arms which he had in his House to be cleaned and mended, Bell-Tents and Camp-Colours to be made, and the Arms of the *Frazer's* Family to be painted on them: He appointed his Son the Colonel, and directed his Tenants and Dependents to follow him, exhorted them to be true to the Pretender's Cause, and encouraged them with an Assurance of Success.

The Men were brought together, and twice rendezvoused; Officers were appointed, who were entertained in his House, and at his Table; where he us'd to call the Pretender's Son by the Name of Royal Prince, and Prince Regent, and drank to his Success. He ordered the Pretender's Declaration to be read; and when the Person whom he had commanded to do it, declined it, he declared, it was High Treason to refuse it. He provided the Men with Arms, Meal, Provisions, and Money; sent for Ribbands to make white Cockades for them; and had Taylors, and other Workmen, in his House, to make them Caps, Bonnets, and Brouges. He went still further; and, as some of his Dependents were unwilling to engage, he ordered the Firy Cross, as it is called, to be sent about his Country, to force them. This is the last and most extreme customary, tho' illegal and cruel, Sort of Process, if I may so call it, that the *Highland* Chiefs use, to compel their Dependents to perform their arbitrary Commands; and is a general public Denunciation of Plunder, Fire, and Sword, on all that do not obey; and several were actually forced into the Rebellion, by taking away their Plaids, Beds, and Cattle, and turning their Wives and Children out of Doors.

While he was using Threats to some, he tempted others, by the Promises of Rewards to their Wives, and Commissions to themselves.

Soon

Soon after the last Rendezvous of the Men, the Earl of *Cromertie's* Clan marched near the Prisoner's House, in their Way to the Pretender's Son: The Earl, his Son, and some of the Officers, called at the House, where they were entertained as Friends: And the Prisoner told the Earl, that his Clan should follow soon after, laying the Blame, at the same time, upon his Son, the Master of *Lovat*, that they were not yet ready.

The Prisoner, however, did not think fit, as yet, either by himself, or his Son, actually to join the Pretender. The Rebels were now but beginning to march Southward; the King's Troops were endeavouring to intercept them; and, till they met, the Event, he thought, might be doubtful. The Rebels, however, escaped them; and, upon the 17th of *September*, got Possession of the Capital of that Part of the United Kingdom; and, in a few Days afterwards, the unfortunate Battle of *Preston-Pans* seemed, in the Opinion of those deluded People, to turn the Scale in their Favour.

At that Time, one *Hugh Frazer*, who had about a Year before been Secretary to the Prisoner, was at *Edinburgh*, where *William Frazer*, a Relation of the noble Prisoner's, happened then likewise to be: They had both heard of his Design of sending the Master of *Lovat* into the Rebellion, and both were desirous of preventing it: For which Purpose *William Frazer* thought of an Expedient for getting the Master of *Lovat* out of the Way, by sending him to *Holland*, to compleat his Education; the Expence of which he was willing to be at. With this Message *Hugh Frazer* went to the Prisoner, and made him the Offer. My Lord *Lovat*, at first, seemed to yield to it; but, at last, told him, He was too far engaged; and was resolved, that the Master should go with his Clan to the young Pretender.

The Prisoner had early Notice of the Battle of *Preston-Pans*, and *Barriisdale*, one of the Heads of the Rebellion, came to his House, and told him, He was going to raise more of the *Higlanders* for the Service. This Battle seems to have determined his Resolution; and when *Hugh Frazer* was to return to *Edinburgh*, he charged him with a verbal Message, to the Pretender's Son, to inform him, That his Age and Infirmities would not permit him to travel; and therefore hoped, he should be excused attending him in Person; but that he would send his Son, at the Head of his Clan, which would be a much greater Mark of his Loyalty. And the Message was delivered accordingly.

The Rebels continued at *Edinburgh* till the 31st of *October*, when they were beginning their March towards *England*; but the Prisoner's Son not having yet joined them, it was thought necessary, that *John Murray* of *Broughton*, the young Pretender's Secretary, should write to the Prisoner, to hasten his Men, and meet them at *Carlisle*. The Letter was wrote, and sent, and soon after delivered by *Hugh Frazer*, who, at the same time, represented to him the bad Condition of the Rebel Army, the State of his Majesty's Forces, and the Arrival of the *Dutch* Troops; which he did, in order to prevent the Prisoner's going on with his Engagements: But the Prisoner told him, It was now too late to go back; and forbid him to mention any thing to his Son against it. He besides told him, That he had put his Name down as a Captain-Lieutenant in his Son's Company, and ever after called him by that Title.

His Dilatoriness, however, had made some of the Pretender's Friends uneasy, and apprehensive that he was playing a double Game; and as they thought it would be of great Service to their Cause, if the noble Prisoner would make a public Avowal of his taking Part with them, applied to him for that Purpose; and told him, that a great deal depended upon his throwing aside the Mask: Upon which he pulled off his Hat, and threw it on the Ground, saying, There it is then.

In the Month of *November* he sent a Letter to the Pretender's Son, to assure him of his Fidelity, and, about the same time, Two others to *Lockiel*, and *Murray* the Secretary, both of them to the same Effect.

Tho' the Two first of these Letters appear by the Dates to have been wrote in *November*, and the latter probably at the same time, yet as the Rebels were then going into *England*, they don't seem to have been sent till their Return. The Prisoner, in the mean time, went on with raising his Men, till it was universally known in that Country, that the Master of *Lovat* was to go at the Head of them, and join the Rebels.

My Lord *Loudon*, and the President of the Session, were then at *Inverness*, collecting a Body of Men to oppose them; and were then superior to the Rebels in those Parts. The Prisoner well knew, that the Design of the Master of *Lovat's* joining the Rebels could not be unknown to them; and that they must suspect, at least, that he himself was at the Bottom of it. This made him afraid for his own Person, as soon as his Son began to march. These Apprehensions made him suspend the Time of their March, till he could be better informed of the Measures the Lord *Loudon*, and the President, would take, in that Event, with respect to himself: And therefore, after he had once ordered them to march, and those of his Country of *Eirib*, had actually begun it, and proceeded as far as *Strathannan*, in the Way to *Perth*, which the Rebels were then in Possession of, his Courage began to fail, and he sent

Orders for their Return ; which they immediately obeyed, excepting Twenty : And he thought it more prudent, before they finally marched, to send *Hugh Frazer* to *Inverness*, to sound the Inclinations of Lord *Loudon*, and the President ; and to represent to them, That the intended March of his Son was against his Inclinations, and contrary to his Commands ; that his Son was obstinate and disobedient ; and that it would be unjust, that a Father should suffer for an undutiful Child.

The Lord *Loudon*, and President, took it to be, as it really was, a Pretence only, and the Effect of that double Part which the Prisoner was acting, till he thought it worth his while to throw off the Mask in Reality. They knew, that a young Man of Nineteen Years old, that had lived at the University, and but just come home, could have no Power over his Father's Tenants and Dependents, but just so far as his Father gave it him ; and that the Prisoner was himself the most absolute Superior in all the *Highlands* : They therefore gave *Hugh Frazer* to understand, there could be no Safety for the Father while the Son was in open Rebellion.

Hugh Frazer returned with this Answer to the Prisoner, and delivered, at the same time, a Letter from the President, to the same Effect. About the same time, News came, that Lord *John Drummond*, with *French* Troops, was landed, which seems to have determined the Prisoner's Resolution : And he told *Hugh Frazer*, That the Threats of the Lord President were but a Bugbear ; and immediately gave the Master of *Lovat* his final Orders to march ; which he instantly obeyed, and marched accordingly : And Lord *Loudon*, and Lord President, found Means, soon after, to secure the Prisoner's Person, who was carried a Prisoner to *Inverness* ; from whence, however, he soon after made his Escape.

The Master of *Lovat* was now got to *Pertb*, at the Head of the Clan of *Frasers*, whither *Hugh Frazer* attended him, as his Captain-Lieutenant ; and, upon Notice from the Pretender's Son, who was then come as far as *Glasgow*, in his Return from *England*, was sent thither by the Master of *Lovat* for a Supply of Arms. *Hugh Frazer*, on his Return from *Glasgow*, was charged by *Murray* the Pretender's Secretary, with a Packet, in which were inclosed Three Letters, one from the Pretender's Son to the Prisoner, referring to a Second, inclosed from *Murray*, *Lochiel*, and *Clunie*, to him likewise, and a Third to the Master of *Lovat*. There were also Three Commissions inclosed, Two of which were dated at *Rome*, 23d December 1743, from the Pretender himself ; one of which was, to make the Prisoner Lord Lieutenant of all the Countries North of *Spey*, and the other, to make him a Lieutenant-General.

The Rebels, as soon as they had collected all their Parties together, marched towards *Inverness*. His Royal Highness the Duke of *Cumberland* followed them, as fast as the Season of the Year, and the Nature of the Country, would permit, till he came up with them, and obtained that signal and compleat Victory, at the Battle of *Culloden*, upon the 16th of April 1746 ; when all the noble Lord's Schemes of Grandeur and Power, and for a new Revolution, were put an End to at once.

I am now come, my Lords, to that last Period of Time, from the Battle of *Culloden*. The Prisoner was waiting, not very far off, the Event of that important Day. The Night after, the Pretender's Son came to *Gortuleg*, where the Prisoner then was, and had an Interview with him. The noble Lord did not even then disavow his Cause, but received him as his Prince ; excused his not joining him in Person ; and, after the tenderest Embraces, parted from him, as a faithful Subject to his Royal Master.

The Prisoner, as well as those who had been in open Arms, was now obliged to fly. He knew his Guilt was the same ; and therefore deserved the same Treatment. The Rebel Army, and their Chiefs that escaped from the Battle, were now dispersed ; but some Correspondence among them was kept up ; and, upon the 15th of May, a Meeting was had, at a Place called *Mortleg*, where there were present the Prisoner, *Lochiel*, his Brother Dr. *Cameron*, *Murray* the Secretary, and several others. The End of the Meeting was, to consider what was proper to be done for their common Safety.

The noble Prisoner met them himself, not as an innocent Person, to advise them to lay down their Arms, confess their Guilt, and beg for Mercy ; not as a neutral Person, if Neutrality, in the Cause of our King, Religion, Liberty, and this happy Establishment, can be attended with a less Degree of Guilt ; but as one involved in the same common Crime and Calamity, as a Chief whose Age and Experience intitled him to the Lead ; and he took it. He advised them to raise a sufficient Number of Men to defend themselves against the King's Troops, till they could make Terms for themselves ; and, after computing what each of those present were capable of procuring, he proposed the Number of 3500, of which each was to raise a certain Proportion : And he himself proposed, That his Son should raise 400 ; and desired *Lochiel*, as he himself had not been in Arms, to answer for his Son. *Lochiel* did so ; and all the Company agreed to the Proposal ; and there having been then lately come from

France,

France, 35000 *Livres*, it was likewise agreed, That each should have Ten Days Pay for their Men out of it; which was immediately distributed; and the Share of the Master of *Lovat* was paid to the Prisoner's Servant. In Consequence of this, about 400 Men, in the Whole, only were raised. But the Rebels made no Stand afterwards.

The Master of *Lovat* had afterwards a Meeting with his Father at *Kilbogie*, when the Master proposed to surrender to his Majesty; but the Prisoner dissuaded him from it, and reflected upon his Son as a Person of mean Spirit to think of so dishonourable an Action; and determined to fly himself, but with a Guard of about Twenty Soldiers, whom he took into Pay for his Defence. However, he was pursued and taken by a Party sent by the Duke, under the Command of Captain *Ferguson*, who treated him with great Humanity. During the Time of his being in his Custody, they had frequent Conversations together concerning the Rebellion: He was asked by the Captain, How he could act as he had done, after all the Favours he had received from the Government. He answered, It was not against the King, but the Ministry, he had acted; that they had taken away his Company: And, when he was told, It was a bad Revenge to endanger his own Life and Fortune, his Answer was, Who could have thought but that they, meaning the Rebels, would have carried all before them? And that, if the young Pretender would have taken his Advice, he might have laughed at the King's Forces; and none but a mad Fool would have fought that Day; that they might have gone into the Mountains, and lived on Butter and Cheese, and given the Duke Twelve Months Work: Besides, that they were in daily Expectation of Assistance and Money from *France*.

The Prisoner was afterwards brought before Sir *Everard Falkener*. He did not then think of denying his Treason: On the contrary, gave the same Account of the Motive to it, which he had done to Captain *Ferguson*; but with this Addition, That he repented the Loss of his Independent Company so much, that, if *Kouli Kan* had come, he should have been for him. He talked much of the King's Mercy, of the former Services he had done to this Royal Family; and that he could still do greater than Twenty such old Heads as his were worth. However, concluded with the following Passage out of *Virgil*,

In utrumque paratus,
Seu versare dolos, seu certæ occumbere morti.

I have now, my Lords, gone through those Three Periods of Time, which I proposed; in which your Lordships have observed many Things of great Moment to the present Cause. The Managers have, with the greatest Care, endeavoured, amongst that great Extent of Evidence which has come to their Knowledge, to discover the Truth; and I have, with the utmost Fidelity, stated to your Lordships no Fact, but what I take to be so. I know, my Lords, how unjust it would be to endeavour to mislead your Lordships: I know how idle and fruitless it would be to attempt it.

I have likewise endeavoured to throw all the Facts together in such an Order, that they may serve to give Light to each other, and ease your Lordships in the Attention you will give to the Evidence that will prove them.

I shall now, therefore, endeavour to give your Lordships a short View of that Evidence. It will be of Two Sorts, Parol, and written Evidence. The former will consist of a great Number of Witnesses, concurring in the Account of the secret Preparations towards the Rebellion, the Steps taken in it; and many, in charging the noble Lord as the principal Actor in both. What they say, will be supported, confirmed, and illustrated, by the written Evidence.

As to the First Sort, it will be tedious and unnecessary for me to give your Lordships a Detail of the Names and Characters of each Witness, or the particular Facts they speak to. It will be sufficient to say in general, that I don't know of one Circumstance that I have opened, which will not be fully proved by some or other of them; that some of the Witnesses were principal Actors in the Steps leading to the Rebellion, as well as in the Prosecuting of it; that some have been long acquainted with the Prisoner, seen his Life and Conversation, and had, from his own Mouth, the Truth of many of the Facts that preceded their own Time; and have attended his Person, and been Eye and Ear-Witnesses of many others; that others of the Witnesses have heard and received his Commands, felt the Weight of his Power, or been employed by him in divers of those Acts of Treason, wherewith he is charged; that all have had full Opportunities of knowing the Facts to which they will be called; and none have any Imputation on their Characters, but that of having some of them been Accomplices in the same Treason.

The written Evidence, which the Managers have been able to collect and produce, consists of Letters from and to the noble Lord. The former are of the Hand-writing of *Robert Frazer*,

Frazer, one of his Secretaries, dictated and signed originally by himself, though the Signatures of some appear now torn off.

They were all written during the Rebellion, not at the Beginning, when the Prisoner, surprised by the sudden Appearance of the Son of him, whom he had formerly called his King, might be drawn into Expressions of Affection and Zeal beyond his real Meaning, but after the Rebellion was grown to a great Height, and the noble Lord had full Time to look about him, to foresee, weigh, and balance all Consequences to his Country, himself, and his Family; and, upon the Whole, had deliberately chosen the Side he took.

Of this Sort of Letters there will be many produced to your Lordships.

One of them written and sent to the Pretender's Son himself, dated *November 1745*. The Signature, and some Parts of the Body of it, are torn off; but that will be supplied by a Copy under the same Secretary's Hand, taken by his Lordship's own Order.

Two others were written, about the same time, to Mr. *Murray* the Pretender's Secretary, and to *Lockiel*.

Two of the rest were written to the Prisoner's own Son.

Your Lordships will excuse my mentioning a few Passages out of them, as a Specimen of the Whole. That to the Pretender's Son, which is itself, in the Articles, made a distinct Overt Act of Treason, is addressed to him by the Title of *Most Royal Prince*; and, in the Conclusion, calls him, *his Royal Highness*. It mentions the Prisoner's having been made a General Officer by the Pretender himself above Forty Years before; excuses his Incapacity of serving him in Person, by his Age and Infirmities; and his Resolution to give him the next Mark of his Zeal, by sending his eldest Son, the Bearer, to venture his Life in his Service, with a great Number of Gentlemen, and Heads of Families, of his Clan, and Eight hundred of his common People.

The Letter to *Murray* is to engage him to become his Son's Patron at the young Pretender's Court. It boasts of the same Merit in sending his Son and Clan, and sets out his own long Services to the Pretender in the strongest Light.

The Letter to *Lockiel* complains greatly of the Treachery, as he call it, of an Honourable Person, in engaging on his Majesty's Side, and of the Mischief his Conduct had done to the Cause; and magnifies his own Clan and Services to the Pretender.

His Letters to his Son open the Secrets of his Heart; acquaint him with the Association he had formerly signed to venture his Life and Fortune to restore the Pretender; informs him of the promised Assistance of *France*, the Commission from the Pretender to make him General of the *Highlands*, the more favourite Patent for a Dukedom; and sets them all in a Light that would render him, as he says, a *Monster of Ingratitude, if he was not attached to the Pretender more than ever*.

The rest of his Letters are written in the same Strain, and founded upon the same Principles of Treason and Rebellion.

The Letters written to the Prisoner are, one from the Pretender's Son himself, referring to another written to him by *Lockiel*, *Murray*, and *Clunie*; and one from the Prisoner's own Son.

The Two former were written by way of Acknowledgment for his Services, and to engage him in an open personal Appearance on that Side, as the best Means to secure the Success of their Cause; and will shew the Pretender's Son's Employment of those Persons, with whom the Prisoner treasonably corresponded.

The Son's Letter is Part of a Correspondence with the Father upon the Subject of the Rebellion, and was the Occasion of the Letters before-mentioned to have been written by him.

My Lords, I have now done with that general View of the Evidence, which I proposed to give your Lordships. I would not anticipate what the noble Lord may say by way of Defence; but as the Evidence, on the Part of the Commons, will necessarily mention One Sort of Defence, which the Prisoner formerly made use of, when he apprehended his Person in immediate Danger from the President and Lord *Loudon*, on account of the *Frasers* rising to join the Pretender;

I can't help just taking notice of it here. His Pretence to them was, That his Clan was raised by his Son alone, without his Direction, and against his Command; and that the whole Conduct of the Clan of *Frazer* was an Act of Disobedience in his Son to him, as well as of Treason to his Majesty; and that it would be hard, that a peaceable Father should be answerable for the Guilt of his Son.

If this should be any Part of the noble Lord's present Defence, I shall obviate it only so far, as to observe to your Lordships, That it is as false as it is unnatural, and will appear to be so, not only by the Parol Evidence we shall produce, but by every one almost of the Prisoner's own Letters, in which he takes to himself the whole Merit of his Son's Services, and values himself to the young Pretender, according to the Strength and Zeal of his Clan.

What

What remains, my Lords, is only to make a few Observations, tending to shew, how the Facts and the Evidence I have been stating, will maintain the particular Charges, which the Commons have undertaken to make good: For which Purpose it will be necessary very shortly to point out the precise Nature of the Charge itself.

It contains Three Species of Treason; Compassing the Death of his Majesty;—Levying War against him within the Realm:—And Corresponding with the Pretender's Son, and his Agents.

As to the First of these: The Wisdom of this Constitution, foreseeing that the general Happiness must be most intimately connected with the Safety of that Royal Person, and providing against the remotest Dangers to which it may be exposed, has made the very Imagination of the Heart, when directed to its Destruction, an Act of Treason: But as the Intent, by itself alone, can be known to none but the great Searcher of Hearts, it has, with equal Prudence and Justice, provided, that this Imagination must be discovered by some external Act, which, in the ordinary Language of the Law, is called an Overt Act.

The Commons have pursued, in their Impeachment, the Law in both respects. They have charged the Prisoner with that traiterous Imagination; and they have stated many Facts that manifest it, such as, by the established Rules of Law, have, in all times, been held sufficient.

The Overt Acts, particularly charged, are, His entering into an Association to raise a War and Rebellion against his Majesty, by the Assistance of *French* Troops; His corresponding with a Pretender to his Majesty's Crown; His obtaining Two Commissions from the Pretender, one to be General of the *Highlands*, and the other a Lieutenant-General of his Forces; His sending a treasonable Letter to the Pretender's Son, with Expressions and Assurances of that Fidelity and Loyalty to his Father, which was due to his Majesty alone; His sending many other treasonable Letters to his Fellow-Subjects, to engage and persuade them to join and continue in that Rebellion, which was then begun and raged in the Northern Parts of this Kingdom; His assisting the Pretender's Son with Arms, and sending his own Son, with his Clan, into the Service of the Pretender.

Your Lordships will be beforehand with me, in distributing the various Matter I have before opened, to these several Heads: I would only observe, that, besides the Evidence arising from the Witnesses, which will appear in Person at your Lordships Bar, the Prisoner's own Letters are not only special Overt Acts of Treason themselves, but will be the clearest Proof of the most material of the others.

When the Prisoner, in the Fulness of his Heart, opens himself to a Son, whose Parts and Proficiency were his own Pride, upon a Subject the most of all interesting to both, to the future as well as present Happiness of his Family, its Honours and Estate, your Lordships can have no possible Doubt of the Reality of that Association, those Honours, those Trusts, and that Attachment to the Pretender, on which he builds and communicates the Resolution he had then taken.

When he writes to the Pretender's Son himself, then in the Capital of one Part of the United Kingdom, at the Head of an Army of Rebels, acting the Part of Royalty, and subduing his Majesty's faithful Subjects, to boast of his former, and promising him future Loyalty, your Lordships must see, in the clearest Manner, what Side he had chosen, and whose Life and Throne he was striking at.

As to the Treason of levying War, the Prisoner seems to have thought, that nothing but an open personal Appearance in Arms would bring him within that Sort of Guilt; and, in Fact, whether out of greater Caution on that account, or from peculiar Views of Management with the Pretender, or more probably from both, he seems studiously to have avoided that particular precise Mark of Treason. But the Law, which, in Words, though not in Punishment, distinguishes, in some Sorts of Crimes, between Principals and Accessaries, makes no such Distinction in this of the highest Nature; they are both, in Treason, equally criminal; and the various Acts of Encouragement, Persuasion, and Assistance, given and done by him, to those who were personally engaged, do, in the Eye of the Law, as indeed they do in Reason, make their Guilt his own.

The last Species of Treason charged, is founded on the Breach of a late Act, made in the 17th Year of his Majesty, on occasion of the Invasion attempted from *Dunkirk* in that Year, in Favour of the Pretender, and accompanied by his eldest Son. This Act extends the Treason made by the Act of the 13th of King *William*, of corresponding with the Pretender the Father, and his Agents, to a Correspondence with his Sons, and their Agents.

The Proof of this Treason will be manifest to your Lordships, both from the written and parol Evidence. The same Letters, which afford such conclusive Proof of the other Treasons, are direct and immediate Proof of this; besides the personal Interview between

the Prisoner and the Pretender's Son, and the many more personal Correspondencies with the Pretender's Servants and Officers.

I have now, my Lords, finished all that I proposed to lay before your Lordships. The great Variety of Matter must be my Excuse for the Length of it.

I am not under any Apprehension, that the Evidence will be insufficient to convince your Lordships of the Justice of the Prosecution. I am more afraid, lest your Lordships, and the World, should inquire, Why all this Load of Evidence? when one of those many Facts, fully established, would be enough to convict the noble Lord of this highest of Crimes, and draw down upon him, from your Lordships, that heaviest of Sentences, which is the Consequence of it. If that Question should be asked, the Answer I would give to it should be shortly this:

The Managers did not think it consistent with their Duty to the Commons of Great Britain, whose Commands they are to execute; that Regard they owe to your Lordships, at whose Bar they are to execute those Commands; nor to the People of Great Britain, whom the Commons represent, and who are greatly interested in the Event of this Impeachment; to suppress any Part of that Evidence, extensive as it is, which came to their Knowledge, material to the Prisoner's Cause.

The Commons have thought this a Matter worthy their own Interposition, and therefore have taken it into their own Hands, not to deprive the noble Lord of any legal Defence: The Candour of the Commons, and your Lordships Justice, will secure him against any Danger of that kind; not because they wanted that Evidence, which would be sufficient in the ordinary Courts of Justice; for far would it be from them to throw their Weight into the Scale of Evidence; but because of the wide extensive Part the Prisoner has had in this great Scene of Treason, as its Contriver, Promoter, and Finisher, so far as Providence suffered it to go.

As to your Lordships, the Managers did not think it becoming them to prejudge your Opinion, or deprive your Lordships of that full Day-light in which the Crimes of this Lord appeared to them, and of that greatest of all Satisfaction, which every Judge would wish to have, in every Cause, of being certainly right in the Sentence he is to pronounce.

As to the People in general, it is of no small Moment, that they should be enabled to behold, in one View, the pernicious Schemes that have, for many Years, been concerting between Rome, France, and unnatural Traitors at Home, that they might see a Rebellion, which they have so lately and severely felt, traced, in some measure, to its Source; and be fully convinced, that, whilst they are themselves enjoying, at their Ease, and too often asleep, their Religion, their Liberties, and their Properties, under the Protection of the best of Princes, and the Influence of the wisest Constitution, they have Enemies both abroad, and within their own native Country, who are constantly awake for the Subversion of them all; and learn this certain Truth, which should be imprinted, in everlasting Characters, on the Mind of every Briton; That there is no effectual Security against those determined and perpetual Enemies, but in a vigilant and firm Union of honest Men; and be persuaded, that every Attempt to prevent, weaken, or dissolve such an Union, is little less than Treason in its Beginning, and, if it takes Effect, must end in a real successful one, the worst that can happen to this Land of Liberty, the total Destruction of this Royal Family, and of this happy Establishment.

Sir John Strange.

My Lords,

THE Managers do not think it necessary to take up any more of your Lordships Time, by way of general Opening of this Case; but propose to go directly to their Evidence: And the first Witness we desire may be called, is Robert Chevis, of Murtoun, Esq; a near Neighbour of the impeached Lord, but one at a very great Distance from his Way of Thinking or Acting.

Lord Lovat. My Lords, I have not had the Use of my Limbs these Three Years: I cannot see, I cannot hear; and I beg, if your Lordships have a mind I should have any Chance for my Life, that you will allow either my Counsel or Solicitors to examine my Witnesses, and to cross-examine those produced on behalf of the Crown, and to take Notes.

Lord High Steward. What your Lordship says, if I understand you right, is, that, by reason of your Age and Infirmities, you cannot examine the Witnesses yourself; but pray, that either your Counsel or Solicitors might have Liberty to cross-examine the Witnesses against you, and to examine your own Witnesses. It is my Duty to acquaint your Lordship with what is the known and clear Law in these Cases; and I did acquaint your Lordship with it, in what I mentioned to you at first, that, by the Order of this House, you had Counsel

Counsel and Solicitors assigned you, who had Liberty to assist you in all Matters of Law, that might arise in the Course of your Tryal; but that, by the known Rules of Law in Proceedings of this Kind, they have not Liberty to assist you in Matters of Fact, or in the Examination of Witnesses. As to taking Notes, I have observed, that one of your Solicitors has, during the Time that the Managers for the House of Commons have been speaking, taken Notes; and that has been allowed.

Lord Lovat. My Lords, It is impossible for me then to make any Defence, by reason of my Infirmities. I do not see; I do not hear; I came up to your Lordships Bar at the Hazard of my Life; I fainted away several times, I got up so early; I was up by Four o'Clock this Morning; and I am so weak, that, if I am deprived of the Assistance I ask for, your Lordships may do as you please; and it is impossible for me to make any Defence at all, if you do not allow my Counsel or Solicitors to examine the Witnesses. I will therefore submit myself to the Lords.

Lord High Steward. Gentlemen of the House of Commons, You have heard what has been asked by my Lord *Lovat*, with his Reasons for it: Have you any thing to offer on that Head?

Sir William Yonge. My Lords, It has been determined by your Lordships, That the Prisoner at the Bar cannot, in this Case, be allowed Counsel to assist him, except in Matters of Law: And, as that is known to be Part of the Law of the Land, whatever Inclination the Managers may have to indulge the noble Lord at the Bar, it is not in our Power to depart from the Law of the Land. We therefore hope your Lordships will excuse us in not consenting to what is contrary to the Law of the Land. We cannot do any thing of this kind without repairing to our own House.

The Witness being produced;

Lord Lovat. My Lords, I object to this Witness being examined, because he is a Tenant of mine; and I am informed, that my Tenant cannot be Evidence against me.

Lord High Steward. My Lord *Lovat*, There is no Rule of Law for that in *England*.

Lord Lovat. My Lords, I am told, that there is an Act of Parliament, that no Vassal, Tacksman, or Tenant, shall be a Witness against his Lord.

Lord High Steward. Your Lordship will please to name that Act of Parliament.

Lord Lovat. My Lord, I am told it is in the First Year of King *George* the First, Cap. 19.

Then the Clerk, by Direction of the Lord High Steward, read the Title of the Act of Parliament passed in the First Year of his late Majesty King *George* the First, intituled,

“ An Act for Encouraging all Superiors, Vassals, Landlords, and Tenants, in *Scotland*, who do and shall continue in their Duty and Loyalty to his Majesty King *George*; and for Discouraging all Superiors, Vassals, and Landlords, and Tenants, there, who have been, or shall be, guilty of rebellious Practices against his said Majesty; and for making void all fraudulent Entails, Tailzies, and Conveyances, made there, for barring or excluding the Effects of Forfeitures, that may have been, or shall be, incurred there on any such Account; as also for calling any suspected Person or Persons, whose Estates or principal Residence are in *Scotland*, to appear at *Edinburgh*, or where it shall be judged expedient, to find Bail for their good Behaviour, and for the better disarming disaffected Persons in *Scotland*.”

And also the First Section, whereby it is Enacted,

“ That if any of his Majesty's Subjects of *Great Britain*, having Lands or Tenements in *Scotland* in Property or Superiority, has been, or shall be, guilty of High Treason, by holding, entertaining, or keeping any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said Pretender, or with any Person or Persons employed by him, knowing such Person to be so employed, or shall, by Bill of Exchange, or otherwise, remit or pay any Sum or Sums of Money for the Use or Service of the said Pretender, knowing such Money to be for such Use or Service; and that whether the said Facts or Things be done within or without this Realm, or has been, or shall be, adherent to the said Pretender in this Realm, giving him Aid or Comfort in this Realm, or elsewhere; every such Offender, who shall be thereof duly convicted and attainted, shall be liable to the Pains, Penalties, and Forfeitures for High Treason. All and every Vassal and Vassals in *Scotland*, who shall continue peaceable, and in dutiful Allegiance to his Majesty, his Heirs and Successors, holding Lands or Tenements immediately of the Crown, shall be vested and seised, and are hereby Enacted and Ordained, to hold the said Lands or Tenements of his Majesty, his Heirs and Successors, in Fee and Heritage, for ever, by such Manner of Holding as any such Offender held such Lands or Tenements

“ of

“ of the Crown at the Time of the Attainder of such Offender : And where Lands or Tenements, belonging to any such peaceable and dutiful Subjects to his Majesty, his Heirs and Successors, lie within any Regality or Constabulary in *Scotland*, the same shall be, and they are hereby, dissolved from every such Regality or Constabulary for ever : And, in like manner, all and every Tenant and Tenants in *Scotland*, who shall continue peaceable, and in dutiful Allegiance to his Majesty, his Heirs and Successors aforesaid, bricking and occupying any Lands, Milns, Mines, Woods, Fishings, or Tenements, as Tenant or Tenants, Tacksman or Tacksmen, from and under any such Offender, shall and they are hereby ordained to brick and occupy all and every such Lands, Mines, Milns, Woods, Fishings, and Tenements, for the Space of Two Years or Crops, to be accounted from and after such Attainder, freely, without Payment of any Rent, Duty, or Service, for the said Two Years or Crops : And the Court of Exchequer in *Scotland* is hereby authorized and required, on Production of any such Attainder, to revise, compound, and pass Signatures, and that without paying any Composition, in favours of every such Vassal or Vassals, and his, her, or their Heir or Heirs, of the said Lands and Tenements above-mentioned respectively to be holden of his Majesty, his Heirs and Successors, in Fee and Heretage, for ever, and by such Holdings as is above-mentioned, with Clauses of *Novo Damus*, and (where such Lands or Tenements hold Ward or *Few cum Maritagio*, or with Clauses irritant) with Change of Holdings from Waird to Taxed-Waird, according to the Rules now observed in the Court of Exchequer in *Scotland*, dispensing with Recognition and Clauses irritant in favours of the Crown in Time coming, in the most ample and best Form, to the end that Chartours and Infeftments may be thereupon duly exped.”

And also the Ninth Section ; whereby it is

“ Provided always, and be it Enacted, by the Authority aforesaid, That no Person or Persons, who may reap, or have any Benefit or Advantage by the Attainder, Conviction, or Forfeiture, of any Person or Persons, by virtue of this Act, shall be capable of being a Witness or Witnesses, against any Person or Persons, by whose Attainder, Conviction, or Forfeiture, any Benefit shall or may accrue to such Witness or Witnesses.”

Lord High Steward. My Lord *Lovat*, Are those the Clauses your Lordship means ? or will you have any other Clause read ?

Lord Lovat. My Lord, That is what I mean.

Lord High Steward. What your Lordship insists upon seems to me to be, That, by this Act of Parliament, as you understand it, a Person who is a Tenant or Tacksman to any Lord, if his Lord is convicted of Rebellion, and such Tenant remains peaceable, the Tenant is discharged from Two Years Rent of the Lands held by him. And by the Ninth Section, No Person can be a Witness, who may reap or have any Benefit by the Attainder of the Person he is to be a Witness against. I am not now going to give any Opinion upon that Section, neither is it proper that I should ; but it is necessary for me to inform your Lordship, that it is incumbent upon you to lay a Foundation of Fact, to shew, that the Person produced as a Witness is a Tenant or Tacksman under your Lordship, within the Description of this Act of Parliament : And your Lordship may either prove this Fact, by calling Witnesses of your own, for that Purpose ; or by putting the Question to the Person now produced by the Managers. Has your Lordship any Witness to prove this Fact ; or will you examine the Gentleman produced upon a *Voire dire* ?

Lord Lovat. I will ask it of this Gentleman.

Lord High Steward. Gentlemen of the House of Commons, Have you any Objection to my Lord *Lovat*'s asking the Question of this Witness ?

Mr. Attorney General. My Lords, We have no Objection to having that Question asked of the Witness.

Lord High Steward. As the Question is to the Competency of the Witness, and he is to be examined touching that, he is not now to be sworn as a Witness in Chief ; but the Oath is to be administered upon a *Voire dire*.

Then the Witness was sworn by the following Oath :

You shall true Answer make to all such Questions as shall be demanded of you ; and you shall speak the Truth, the whole Truth, and nothing but the Truth.

So help you GOD.

Lord High Steward. My Lords, As my Lord *Lovat*'s Voice is low, whatever Questions his Lordship has to ask of this Gentleman, your Lordships, I presume, will (as you did upon a former Occasion) let my Lord *Lovat* propose the Question, and let the Clerk repeat it to your

your Lordships, and to the Witness. My Lord Lovat, You will now propose the Question, and the Clerk will repeat it to my Lords, and the Witness.

Lords. Ay, ay.

Then one of the Clerks was sworn to make true Report of what should be said by the Prisoner.

Lord Lovat. My Lords, I beg this Witness may be asked, Whether he holds any Lands of me, or within my Regality, either by Tack, Lease, or otherwise?

Chevis. I hold my Lands of the Crown: I never had a Tack of Land of my Lord Lovat.

Lord High Steward. Do you hold any Lands, either by Vassalage, Lease, or Tack, from my Lord Lovat?

Chevis. I never had a Tack of Land from my Lord Lovat.

Lord High Steward. You are to answer to the Whole of the Question, Whether you hold any Land, either by Vassalage, Lease, or Tack, of my Lord Lovat?

Chevis. I never had a Lease from my Lord Lovat: I was in Possession of a Farm of his there, which, by his own Consent, was given to other People; but I never had a Lease from him.

Lord High Steward. Did you hold that Land of my Lord Lovat?

Chevis. The Farm belonged to my Lord Lovat.

Lord High Steward. How did you hold it of him; by Tack, or Lease, or how?

Chevis. It was ceded to me by other People, who were in Possession before me.

Lord High Steward. Did you hold it by Lease, or Tack, or in what manner?

Chevis. I never had any Lease, or Tack, from the Lord.

Mr. Attorney General. Do you now hold any Lands from my Lord Lovat?

Chevis. No, I hold none of him.

Mr. Attorney General. Have you held any Lands of him since the Beginning of the Rebellion?

Chevis. I have held none since the Beginning of the Rebellion; nor been in Possession of a Fur of Land under him.

Mr. Attorney General. My Lords, I should be glad to know of this Witness, whether he holds any Lands within the Regality of Lovat?

Chevis. No, I hold no Lands of my Lord Lovat there: I had that small Farm I before mentioned.

Lord Cholmondeley. My Lords, The Question put to the Witness, at first, was, Whether he held any Lands of my Lord Lovat, either as Vassal, Tenant, or Tacksman, according to the Description mentioned in the Act of Parliament? And if he does, then he comes within the Description there mentioned. He has told your Lordships, That he does not hold any Lands, by Tack, or Lease, from my Lord Lovat. My Lords, I pray that the Question may be now asked him, Whether he holds any Lands of my Lord Lovat, either by Vassalage, Tack, or Lease?

Lord High Steward. Sir, You hear the Question proposed by the noble Lord. Do you hold any Lands under my Lord Lovat, as Vassal?

Chevis. No.

Lord High Steward. Do you hold any Lands under my Lord Lovat, as Tenant?

Chevis. No.

Lord High Steward. Do you hold any Lands under my Lord Lovat, as Tacksman?

Chevis. No.

Lord Talbot. My Lords, I desire this Witness may be asked, Whether he apprehends he can receive any Benefit under this Act of Parliament, by my Lord Lovat's being convicted of High Treason?

Lord High Steward. Sir, You hear the Question asked by the noble Lord.

Chevis. I never heard the Act of Parliament mentioned till this Day: I know of no Benefit I am to receive under it.

Lord High Steward. Do you know of any Benefit that you are to receive, or do you apprehend, that you can receive any Benefit, from the Conviction of my Lord Lovat?

Chevis. No.

Lord High Steward. Do you hold any Lands at all within the Regality of Lovat?

Chevis. No.

Proclamation for Silence.

Lord Lovat. My Lords, I beg this Witness may be asked, Whether he owes me any Money?

Mr. Attorney General. My Lords, on Behalf of the Commons, we do object to that as an improper Question, because I must submit it to your Lordships, that no Question is proper to be asked, but what tends to the Discovery of something material to the Point in Controversy. Now, my Lords, The Question proposed to be asked, be it answered one Way or the other, cannot tend to prove any thing material to the present Purpose.

Lord Lovat interrupting,

Lord High Steward. My Lord *Lovat*, You are not to interrupt the Gentlemen of the House of Commons: You shall be fully heard, in your Turn.

Mr. Attorney General. My Lords, I say your Lordships will not permit a Question to be asked, which is totally immaterial to the present Purpose: And, I apprehend, this Question is totally immaterial, because the Questions now to be put to the Witness are only for the Purpose of disqualifying him to be an Evidence, which this Question does not in the least relate to; and be it answered the one Way or the other, it cannot tend to disqualify the Witness: Whether it be answered Yea or No, it cannot tend to disqualify the Witness.

Lord Lovat. My Lords, I beg, that the Witness may be asked, Whether he receives any Rents, or other Profits, from those Lands lying within the Regality of *Lovat*?

Mr. Attorney General. My Lords, If this amounts to a Question, to bring the Witness under the Description of the Act of Parliament, it is a Question that has been already put by your Lordships; and answered particularly and precisely. If the Question tends to any other Matter, I cannot conceive to what Purpose it is to be asked. But, my Lords, it is incumbent on the noble Lord at your Bar, to mention what he intends to shew by the Question he asks.

Lord High Steward. My Lord *Lovat*, The Witness on this Examination hath sworn, That he holds no Lands or Tenements under your Lordship, either as Vassal, Tenant, or Tacksman; and your Lordship would now have him asked, Whether he receives any Rents, or other Profits, from any Lands lying within the Regality of *Lovat*? As what the Witness has already sworn does fully answer all the Disqualifications mentioned in the Act of Parliament which your Lordship has quoted, what do you intend by the present Question?

No Answer being made by the Prisoner, *Robert Chevis*, of *Murtoun*, was sworn in Chief.

Sir John Strange. My Lords, I desire this Witness may inform your Lordships, How long he has been acquainted with the noble Lord at the Bar?

Chevis. From about the Year 1733.

Sir John Strange. Whether he has been acquainted with him ever since the Year 1733?

Chevis. Ever since.

Sir John Strange. Do you live near the noble Lord at the Bar?

Chevis. I live within Two Miles of him.

Sir John Strange. Whether he has not been often in his Company since the Year 1733?

Chevis. A great many times.

Sir John Strange. Whether he went to his House frequently?

Chevis. Yes.

Sir John Strange. Whether he has had any Conversation, and what Conversation, with him, in relation to publick Affairs?

Lord High Steward to the Witness (perceiving him to have a Paper in his Hand),

Lord High Steward. What Paper is that in your Hand?

Chevis. Notes of my own.

Lord High Steward. Are they of your own Hand-writing?

Chevis. Yes.

Lord High Steward. To what Purpose did you take them?

Chevis. Only to refresh my Memory.

Lord High Steward. Was that the only Reason you took them for?

Chevis. The only Reason.

Sir John Strange. My Lords, I beg this Witness may be asked, What was the general Turn of the Conversation of the noble Lord at the Bar?

Chevis. The general Turn of his Conversation was in Favour of the Pretender, and his Family.

Sir

Sir John Strange. Whether the Witness speaks of the Conversation so far back as the Year 1733?

Chevis. Yes.

Sir John Strange. Whether the Witness had ever any Conversation with the noble Lord at the Bar, in relation to the Year 1719?

Chevis. I had.

Sir John Strange. My Lords, I beg he will give an Account, What the noble Lord at the Bar has said to him, in relation to what was going to be done in the Year 1719?

Chevis. My Lord *Lovat* told me of a Letter he had written to the late Lord *Seaforth*; and that he had sent it, by his own Lieutenant to Lord *Seaforth*, to encourage and desire him to come down with his Men; and that he, Lord *Lovat*, would join him with all his, in favour of the Pretender.

Notice being taken by some Lords, at the upper End of the Court, that they could not well hear the Witness, the Lord High Steward directed the Clerk to repeat the Answers of the Witness as he delivered them: Which was done accordingly.

Sir John Strange. Whether the noble Lord at the Bar acquainted him with his having sent such a Letter?

Chevis. He told me he had sent such a Letter by his Lieutenant.

Sir John Strange. My Lords, I beg he may be asked, whether he ever knew, from the noble Lord at the Bar, that That Letter was delivered, or not?

Chevis. Lord *Lovat* told me, that the Letter was delivered.

Sir John Strange. To whom did he say the Letter was delivered?

Chevis. He said the Letter was first shewn to *Chiselm* of *Knockford*; and after that it was delivered to my Lord *Seaforth*.

Sir John Strange. I shall be glad to know, whether my Lord *Lovat* said any thing to the Witness, in relation to any Affidavit that had been made concerning that Letter?

Lord High Steward. Gentlemen of the House of Commons, The Transaction now inquired of happened in the Reign of his late Majesty; and there is no Charge, in the Articles of Impeachment, of any High Treason committed against his late Majesty: You will therefore open to my Lords, how you would apply the Evidence which you are now examining to?

Sir John Strange. My Lords, Your Lordships will please to observe, that, in the Answer of the noble Lord at the Bar, he does particularly mention his great Duty and Affection for his late Majesty, and his Behaviour from time to time, in that respect; and we are now introducing this particular Evidence, in regard to that Matter, by first taking it up so long ago as the Year 1719, to shew what was then the Disposition, Behaviour, and Conduct, of the noble Lord at the Bar.

My Lords, We say, that, in the Year 1719, there was that Letter written, with a View to assist the *Spanish* Invasion then intended, in favour of the Pretender: That that Letter was sent; but before it was delivered to the Person to whom it was addressed, there was a Communication of it, in the manner the Witness hath mentioned; and that Person gave proper Notice, and made Affidavit of it, which was sent up to the Government, giving an Account of it: And, by the great Dexterity of the Prisoner at the Bar, he got the Letter back again.

My Lords, The Use we make of this is to shew, that this is no new Matter, arising from the present Rebellion: But, by deducing it from the Year 1719, we shall make the noble Lord's Conduct to be one continued Act of Treason, consistent with the Article of the Charge.

Lord High Steward. Then I apprehend you apply this Piece of Evidence, to encounter and contradict the Allegation in my Lord *Lovat*'s Answer, which you have mentioned.

Then the Lord High Steward repeated to the House that Allegation, out of the Prisoner's Answer.

Sir John Strange. My Lords, That is what we propose to shew by this Evidence. The Witness has gone so far as to acquaint your Lordships, that That Letter, before it was delivered to the Person to whom it was addressed, was shewn to one *Chiselm* of *Knockford*. My Lords, I desire he may inform your Lordships, what the noble Lord at the Bar said was done, in Consequence of that Communication.

Chevis. *Chiselm* made Affidavit of it, which was sent up to Court.

Sir John Strange. Did Lord *Lovat* acquaint you whether he heard of such Affidavit being transmitted?

Chevis. He did,

Sir John Strange. Did he tell you what he did upon that Occasion?

Chevis. That he went immediately to Court, and got himself introduced there; And Lady *Seaforth* being then in *London*, she applied to him to do something in favour of her Son; which he then absolutely refused, till her Son should return him that Letter; which being done, he shewed it to a certain Friend, who read the Letter, and who told him, That there was enough to condemn Thirty Lords there, and threw it into the Fire.

Sir John Strange. My Lords, I desire he will give an Account whether the noble Lord at the Bar said any thing at that time, whether he had signed and sealed the Letter?

Chevis. He said he had not signed it; and therefore they could not fix him with it.

Sir John Strange. I desire this Witness may inform your Lordships, whether, when the noble Lord at the Bar told him, that he had not signed it, he said any thing further to him upon that Occasion, than that he had not signed it?

Chevis. He said, That he could not be fixed with it; and that That was the Way he intended to get off, by its not being signed.

Sir John Strange. I desire you will please to inform their Lordships, whether you remember the Time when *Roy Stuart* broke out of *Inverness Gaol*?

Chevis. Yes; it was in 1736.

Sir John Strange. Who was Sheriff at that time?

Chevis. My Lord *Lovat*.

Sir John Strange. After *Roy Stuart* had escaped out of *Inverness Gaol*, where did he go to live? By whom was he entertained?

Chevis. He came to my Lord *Lovat's* House, and was entertained there.

Sir John Strange. How long was he entertained there?

Chevis. Much about Six Weeks, to the best of my Remembrance.

Sir John Strange. Was you often at my Lord *Lovat's* during these Six Weeks?

Chevis. Frequently.

Sir John Strange. Was you ever there when Lord *Lovat* and *Roy Stuart* were together?

Chevis. Very often.

Sir John Strange. Do you remember whether *Roy Stuart* was going abroad about that time?

Chevis. He was going abroad then; and the Ship was prepared for him before he left Lord *Lovat's* House; and he went in my Lord *Lovat's* Chaise or Chariot.

Sir John Strange. I desire you will inform their Lordships, whether any Message was sent from the noble Lord at the Bar by *Roy Stuart*; and to whom?

Chevis. I heard the noble Lord at the Bar charge him with a Message to the Pretender.

Sir John Strange. What do you mean by charging him with a Message?

Chevis. To assure the Pretender, whom he called his King, of his Fidelity; and that he was determined to live and die in that Cause.

Sir John Strange. I beg that he may inform your Lordships, whether there was any thing said at that time in relation to any Commission or Patent?

Chevis. He charged him to expedite his sending his Commission of Lieutenant-General of the *Highlands*, and his Patent of a Duke?

Sir John Strange. I beg he may inform your Lordships, whether, at any other time or times, he heard the noble Lord at the Bar say any thing whether he had, or had not, succeeded in what he had sent for?

Chevis. About 1742, he owned to me, That he got his Commission, and Patent to be a Duke.

Sir John Strange. What Commission did he tell you he had got?

Chevis. A Commission of Lieutenant-General of the *Highland Clans*.

Sir John Strange. From whom did he say he had received this Commission, and Patent to be a Duke?

Chevis. From his lawful Sovereign King *James* the Eighth.

Sir John Strange. Pray recollect yourself. Did he make use of that Expression which you have now repeated, that he had it from his lawful Sovereign King *James* the Eighth? Are you certain he did?

Chevis. Yes.

Sir John Strange. Did he tell you any thing what he would do, now he was invested with that Command, and had got such a Commission and Patent?

Chevis. He said, That he was in a Condition thereby to humble his Neighbours.

Sir John Strange. Have you at any other time heard him speak of this Patent, or of this Commission?

Chevis. Several times.

Sir John Strange. Is it often that you have heard him?

Chevis. Often.—He has told me, That he had a Right to it by his Services for that Family; and that he had the like Commission from the Pretender's Father from *St. Germain's*.

Sir John Strange. I desire the Witness may inform your Lordships, whether, during the Time that the noble Lord at the Bar and *Roy Stuart* were together, they diverted themselves with composing any thing, and what?

Chevis. They did, in composing Burlesque Verses, that, when young *Charles* came over, there would be Blood and Blows.

Sir John Strange. You have not mentioned it in a poetical Manner: Pray, can you recollect the Lines?

Chevis. When young *Charley* does come o'er,
There will be Blows and Blood good Store.

Sir John Strange. I beg that you will acquaint their Lordships, whether this Verse, that you mention, is a Translation, or whether this is the original Language in which it was composed?

Chevis. It was framed in *Erse*; and this is the Substance of one Verse.

Sir John Strange. I beg this Witness may inform your Lordships, whether he has at any time heard the Prisoner say any thing in relation to any Association?

Chevis. I have.

Sir John Strange. Please to tell the Time you heard this Discourse, and what the noble Lord at the Bar said?

Chevis. It was between 1737 and 1740.

Sir John Strange. What did you hear the noble Lord at the Bar say then?

Chevis. That there was an Association of the *Highland* Clans in favour of the Pretender, whom he called his lawful Sovereign King *James* the Eighth; and that he had entered into that Association, and would live and die in that Cause.

Sir John Strange. I beg he may be asked, whether, at the Time he is speaking of, one *Drummond* of *Bochaldie* was at Lord *Lovat's* House?

Chevis. *Drummond* of *Bochaldie* was there much about this time; and used to drink Success to the Association.

Sir John Strange. Do you remember *Bochaldie's* being at *Castle-Downey*, and staying there any time?

Lord High Steward. What Place is *Castle-Downey*?

Chevis. It is Lord *Lovat's* Place of Residence.

Sir John Strange. My Lords, It is sometimes called *Beaufort*, and sometimes *Castle-Downey*. To whom does it belong?

Chevis. To my Lord *Lovat*.

Sir John Strange. Do you know whether you heard my Lord *Lovat* say any thing to *Bochaldie* at that time?

Chevis. He mentioned an Invasion of *Britain* in favour of the Pretender.

Sir John Strange. What Year are you now speaking of?

Chevis. The Year 1739.

Sir John Strange. You say, That *Drummond* was then at Lord *Lovat's*, staid there a considerable Time, and heard my Lord *Lovat* propose an Invasion of *Britain* in favour of the Pretender?

Chevis. I did.

Sir John Strange. Did you hear him propose it? And did you hear of any-body else he proposed it to?

Chevis. I have heard the like was proposed to *Cameron* of *Lockiel*, and others.

Sir John Strange. From whom have you heard it?

Chevis. From my Lord *Lovat* himself.

Sir John Strange. Do you remember any thing to have happened at Lord *Lovat's* about the Time of *Ostend's* being taken by the *French*?

Chevis. I was not there then; but he wrote a Letter to me, and told me, That the whole Coast of *Flanders* was now clear.

Sir John Strange. Did you hear my Lord *Lovat* say any thing in relation to the Coast of *Flanders* upon *Ostend's* being taken?

Chevis. I have heard him say as much as he wrote in that Letter.

Sir John Strange. What have you heard him say?

Chevis. That the Coast of *Flanders* was then cleared; and that the *French* would be over in one Night's Time, and carry all before them.

Sir John Strange. I should be glad you would inform their Lordships, whether, at any Time in the Year 1745, Lord *John Drummond* was at *Castle-Downey*, or not?

Chevis. To the best of my Memory, he was about that time at *Castle-Downey*.

Sir John Strange. I should be glad you would inform their Lordships about what Time of the Year this was, whether it was Summer, or Winter?

Chevis. I think it was Summer; to the best of my Memory, between Summer and Harvest.

Sir John Strange. I beg you will inform their Lordships, whether at any time, and in what Month, in the Year 1745, the Master of Lovat came to my Lord's House; or whether you saw him at my Lord's in 1745?

Chevis. I saw him there several times in 1745.

Sir John Strange. Did you see him there when any Paper or Manifesto was produced?

Chevis. I saw him there when the Manifesto was produced.

Sir John Strange. At what time was this?

Chevis. It was in September 1745. The Manifesto came in a Packet inclosed to Lord Lovat.

Sir John Strange. What Manifesto was it?

Chevis. The Pretender's Manifesto and Declaration, which he ordered the Master immediately to read.

Sir John Strange. Was it read accordingly by the Master of Lovat?

Chevis. It was accordingly read.

Sir John Strange. What did Lord Lovat say when it was read, or before it was read?

Chevis. I objected to the Manifesto's being read; and Lord Lovat told me I talked Treason.

Sir John Strange. Did he tell you what was his own Disposition in regard to that Manifesto, after it had been read?

Chevis. He told me, after reading the Manifesto, That he was to join the Pretender's Party in that Cause; and that he would live and die in that Cause.

Sir John Strange. I beg the Witness may mention to your Lordships, whether the noble Lord at the Bar expressed his Opinion in relation to the good or ill Success of it?

Chevis. He said he thought Success was morally sure; As sure as Light, as sure as God was in Heaven; the Pretender would prevail.

Sir John Strange. I beg you'll recollect, and give my Lords the very Words. Did he say the Pretender?

Chevis. Not the Pretender; but his right Master.

Sir John Strange. What was the Expression he made use of?

Chevis. As sure as the Sun shined.

Sir John Strange. That who would prevail?

Chevis. That his Master (the Pretender) would prevail.

Sir John Strange. I beg you will inform their Lordships, whether any thing was offered to you upon that Occasion?

Chevis. I was offered a Captain's Commission.

Sir John Strange. By whom?

Chevis. By Lord Lovat, in that Service.

Sir John Strange. In what Service?

Chevis. In the Service of that Person, whom he called his lawful Prince.

Sir John Strange. My Lords, I beg he may inform your Lordships, whether my Lord Lovat said any thing in relation to the Pretender, to recommend him to the Witness, at the Time he says Lord Lovat offered him a Commission?

Chevis. I have often heard Lord Lovat say, That whoever looked the Pretender his lawful King in the Face, he would own he was his only rightful King, as he himself owned him to be.

Sir John Strange. I beg he may be asked, whether he can recollect, during the Time of the late Rebellion, any Number of *Frasers* being assembled?

Chevis. I cannot say; for, after the Time of reading the Manifesto, I did not visit my Lord Lovat. I discontinued going to his House.

Sir John Strange. For your own sake, I desire to ask you, Did you accept of the Commission offered you by Lord Lovat, or not?

Chevis. I did not indeed; I refused it.

Sir John Strange. What Healths have you heard the Prisoner toast in your Company?

Chevis. Confusion to the White Horse, and all the Generation of them.

Sir John Strange. Are you certain you heard my Lord Lovat propose that Health?

Chevis. I have heard him propose it, and drink it.

Sir John Strange. What did you understand was the Meaning of that Expression, Confusion to the White Horse?

Chevis. Confusion to the present Royal Family: It could mean nothing else. It was an Allusion to the Arms of the Family.

Sir John Strange. I should be glad you would inform their Lordships, whether you know of any Message sent by my Lord Lovat by Drummond of Boxbaldie, besides what he has mentioned; any thing concerning the Reformation or Revolution?

Chevis. He was to execute the Message, and that with respect to his Commission and Patent.

Sir John Strange. With whom was he to execute that Commission?

Chevis. With the Pretender, at Rome.

Sir John Strange. Did he, at that time, say any thing more to him; and what was it?

Chevis. He talked of the Association, and of the Invasion.

Sir John Strange. Did my Lord Lovat say any thing of Religion, at that time?

Chevis. I heard him say frequently, he believed there was no true Religion in the World but one, which was the Church of Rome.

Sir John Strange. Was any thing said of the Revolution?

Chevis. He cursed the Reformation and the Revolution too.

Sir John Strange. What did he curse the Reformation for?

Chevis. Because, he said, it brought a false Religion upon us, and the Revolution involved us in a Load of Debt.

Sir John Strange. Did he then propose any Scheme to get rid of this Grievance?

Chevis. The Scheme he proposed was, by favouring the Invasion, and by taking Part in it.

Sir John Strange. Did he say for what Purpose that Invasion was to be?

Chevis. To restore the rightful King.

Sir John Strange. Did he name him?

Chevis. To restore his lawful Sovereign King James the Eighth.

Sir John Strange. I beg you'll give their Lordships an Account, whether you ever heard Lord Lovat say any thing, in relation to a Marriage contracted for his Daughter?

Chevis. I heard Lord Lovat say, that when his Daughter was married to M^r Pherison of Clunie, he took it to be an Accession of Strength, by the adding one Highland Clan more to the Number.

Sir John Strange. Please to inform their Lordships, whether, through the Progress of the Rebellion, you heard the Lord Lovat say any thing, as to what he would do with his Tenants that would not join?

Chevis. He said, It was very easy for him to cut them off in a Moment, as he was in such a Capacity now.

Sir John Strange. What did he mean by that?

Chevis. Any Tenant that should oppose him, or any of the Clan, or Neighbours.

Sir John Strange. I beg you will inform their Lordships, what is the Power and Authority that Lord Lovat insists to have over his own Clan? or whether they are under his Power and Command, or not?

Chevis. Lord Lovat certainly has the Power of an absolute King over them.

Sir John Strange. Inform their Lordships, whether you apprehend the Command of the Clan is in my Lord Lovat, or his Son the Master?

Chevis. It is intirely in my Lord's own Hands.

Sir John Strange. Do you know what Age my Lord Lovat's eldest Son is?

Chevis. Much about Nineteen.

Sir John Strange. Was he at home at the Beginning of the Rebellion? or was he then at any other Place, and where, for Education?

Chevis. He was at Saint Andrews, the Place of his Education; and was called home about that Time.

Sir John Strange. How long was that before Lord Lovat made his Son read the Manifesto which you have mentioned? How long was he at home before that?

Chevis. Not very long before that.

Sir John Strange. You say the young Gentleman was at Saint Andrews, and was sent for home by his Father; and that his Father set him to read the Manifesto: Pray how long had the young Gentleman been at home, before he was ordered to read the Manifesto?

Chevis. It might have been about Two Months, to the best of my Memory.

Sir John Strange. Do you think it was so long?

Chevis. I believe it might have been about Two Months.

Sir John Strange. When my Lord Lovat offered you a Captain's Commission, did he acquaint you who was to be your Colonel?

Chevis. He did not acquaint me, at that time, who was to be my Colonel; but he said he was in that Service in that Cause himself; and I understood, that I was to serve under him.

Sir John Strange. My Lords, As the Witness has informed your Lordships, that he did not go to Lord Lovat's, after he told him it was High Treason to object to the reading of the Pretender's Manifesto, I shall not examine him to any thing subsequent, in point of Time to that; and therefore I shall not trouble your Lordships with asking him any more Questions.

Mr. Attorney General. My Lords, I beg this Witness may inform your Lordships, whether he has heard any thing of any Threats made use of by the noble Lord at the Bar, to his Tenants, or Clan, to come down upon them, if they refused joining?

Chevis. I saw a Party of the *McDonalds* in the Country; and I think they came to the Place where I lived; and I take the Design of them to have been, that they should be there, to overawe the Country.

Mr. Attorney General. Who commanded that Party of the *McDonalds*?

Chevis. *McDonald* of *Barisdale*.

Mr. Attorney General. Did you hear any thing said by my Lord Lovat to *McDonald*, concerning him or his Clan?

Chevis. He said, in general, that, upon being invested with this Patent of Duke, he would be able not only to humble and keep in Awe his own Clan, but his Neighbours.

Mr. Attorney General. I beg he may inform your Lordships, whether he knows any thing of *Barisdale's* going about to the Clans, to encourage them to join?

Chevis. I saw him at Lord Lovat's House the Day of the Rendezvous.

Mr. Attorney General. What did he do there?

Chevis. He spirited up the Country People, and carried them along to the Rendezvous.

Mr. Attorney General. Who was that?

Chevis. *McDonald* of *Barisdale*.

Mr. Attorney General. What do you know, in relation to that Rendezvous?

Chevis. I saw the Rendezvous at a Distance, but I was not upon the Spot.

Mr. Attorney General. Who was at the Rendezvous?

Chevis. Four, or Five, or Six hundred Men.

Mr. Attorney General. Whose Men were they?

Chevis. The *Frasers*.

Mr. Attorney General. Under whose Command were they?

Chevis. I was told, they were under the Master's Command; but I was not personally present.

Lord High Steward. Gentlemen of the House of Commons, Have you done with this Witness?

Managers. My Lord, We have done with him.

Lord High Steward. My Lord Lovat, The Gentlemen of the House of Commons have gone through with their Examination of Mr. *Chevis*: Has your Lordship any Questions to ask him?

Lord Lovat. My Lords, He has said so many false and wicked Things, that I do not know what Questions to ask him, or where to begin.

Lord High Steward. Your Lordship will be pleased to propose the Questions; and then they will be asked of the Witness.

The Clerk repeated the Prisoner's Questions to the Witness.

Lord Lovat. My Lords, I pray he may be asked, Whether or no, since my Arrival here, and being before the House of Lords, and that many Witnesses had been summoned to give Evidence against me, whether this Witness did not go about to solicit Witnesses against me? and whether he did not examine Witnesses himself?

Chevis. I refuse it.

Managers. You mean, you deny it.

Chevis. I deny it.

Lord Lovat. My Lords, I offer to prove it.

Lord High Steward. My Lord Lovat, Your Lordship must do that when you come to make your Defence: Your Lordship will then have an Opportunity, by Witnesses, to contradict or invalidate the Testimony of this, or any other Witness produced against you.

Lord Lovat. I beg this Witness may be asked, Whether he knows, or ever heard, that several People were threatened to be put in Prison, and were put in Prison, if they did not come up to be Evidence against me.

Chevis. I deny it.

Lord Lovat. I beg he may be asked, Whether he discovered to any Person belonging to the Government, the Declaration which he says he heard read at my House.

Chevis. In September 1745, I told in common Conversation; but I never went to any of the Government, to inform them: The Rebellion broke out then immediately.

Lord

Lord Lovat. My Lords, I beg this Witness may be asked, Whether he ever said himself, or has heard others say, that the late Plot by the Master of *Lovat* against me, was to hang the old Man, and save himself?

Chevis. I never heard of such a Plot; but have often heard of a Plot of my Lord *Lovat*'s, to try to hang his Son the Master of *Lovat*, and save himself.

A Lord. My Lords, I don't doubt the Witness designs to pay the Money he owes to my Lord *Lovat*; but I pray he may be asked, whether he expects to be forgiven that Debt, if my Lord *Lovat* is convicted?

Lord High Steward. My Lords, While this Witness was examined upon a *Voire dire*, there was a Question proposed by my Lord *Lovat*, to be asked him, which was, Whether he owed my Lord *Lovat* any Money? That Question was objected to by the Gentlemen of the House of Commons, as not tending to discover any thing material to the Point then in Question: And what is now proposed by the noble Lord, to be asked of the Witness, is, Whether this Gentleman owes my Lord *Lovat* any Money? and if he does, whether he expects to be forgiven that Debt, in case my Lord *Lovat* should be convicted?

Chevis. In regard of that Debt, it was condescended some Years ago, that my Lord *Lovat* should accept a Gentleman who was my Debtor, for the Payment of that Money.

Lord High Steward. Do you owe my Lord *Lovat* any Money?

Chevis. A mere Trifle: This which he speaks of was to be compensated another Way.

Lord High Steward. Whether the Debt be more or less, do you expect to save that Debt, or to be favoured in the Payment of it, if my Lord *Lovat* should be convicted?

Chevis. Not at all; I deny it.

A Lord. How long have you been in Town?

Chevis. Since *Tuesday* last about Noon.

A Lord. Whether have you lived at your own Expence since that time; or who hath supported you?

Chevis. I did design to have lived at my own Expence; but I have been supported at the Expence of the Government.

[Then the Witness withdrew.]

Mr. Solicitor General (the Honourable William Murray, Esquire). My Lords, The next Witness we beg Leave to call, is *Robert Frazer*, late Secretary to my Lord *Lovat*.

Robert Frazer called in, and sworn in Chief.

Proclamation made for Silence.

The Prisoner rising up, the *Lord High Steward* said, My Lord *Lovat*, Do you object to this Witness?

Lord Lovat. Yes.

Lord High Steward. What is your Objection?

Lord Lovat. He holds a Tack of Land of me.

Lord High Steward. Is it true? Do you hold a Tack of Land of his Lordship?

R. Frazer. No; I do not hold any Tack of Land of my Lord *Lovat*.

Lord Lovat. I am ready to prove it.

Lord High Steward. Gentlemen of the House of Commons, My Lord *Lovat* may have Liberty to examine a Witness, to prove that Fact. It has been frequently done after a Witness has been sworn in Chief. My Lords, At the Common Law, where a Witness is tendered by the Plaintiff to be sworn, the Oath to give Evidence in Chief is administered to him, unless the Defendant makes an Objection to his Competency; and then he may be examined touching that Objection, upon a *Voire dire*: But, after the Witness has been sworn in Chief, if any Objection is then made to him, he may be asked the same Question by virtue of his Oath in Chief, as he might have been asked upon a *Voire dire*. I have known it done both Ways. But, after the Witness has been examined by the Defendant to the Fact of the Objection, and has denied it upon his Oath, it is not usual to give the Defendant Liberty to call a Witness to prove it, in order to repel him from being a Witness, unless the other Side acquiesces in it.

Lord Lovat. I have sent for my Witness.

The House having waited some time, my Lord High Steward asked the Prisoner, where his Witness was: Who said, he was at the Coffee-house; and a little time afterwards said, My Lords, The Witnesses are all gone about an Hour ago, not expecting to be called.

Lord High Steward. How came your Witnesses to go away whilst your Tryal is going on?

Lord Lovat. My Lords, They did not know they would be called To-day.

Mr. Solicitor General. My Lords, The Objection made by the noble Lord at the Bar having been positively denied by the Witness, and there being no Evidence here to contradict him, we hope we may proceed to examine him.

Mr. Attorney General. My Lords, We hope your Lordships will not permit the Prisoner at the Bar to suspend your Lordships Proceedings whenever he pleases: And we hope the Candour of the Managers, in not opposing his going into this Objection, after the Witness has denied it upon his Oath, shall not be extended to delay his Examination, under a Pretence of this Kind. The Witness produced denying the Objection upon his Oath, and there being no Evidence here to contradict it, we hope we shall be permitted to go on with the Witness. My Lords, The Managers were aware of this; nevertheless did not, at first, oppose any Indulgence to the Prisoner, that might tend to Justice; but as it is now known what Point the Witness is called to, tho' I do not suppose the Witness capable of being influenced, yet, if a bare Allegation of this Sort is sufficient to put off your Lordships Proceedings, I must submit it to your Lordships, whether it will not give an Opportunity of something to be done which ought not to be done.

Mr. Noel.

IT is with great Difficulty and Disinclination, that we can prevail upon ourselves to object to the utmost Candour that can be shewn to the noble Lord at the Bar. My Lords, This is an Occurrence which, in my little Experience, I never knew to arise. My Lords, I apprehend the Way is, upon this Occasion, to ask the Questions of the Witnesses, upon a *Voire dire*. The noble Lord at the Bar made the Objection, and applied to the Witness for an Answer to that Question, who has positively denied it: If, after that, the Prisoner is to say, I can falsify what the Witness has now sworn; allow me Time for it; and your Lordships should indulge him with it, in this manner; there is nobody but must be apprehensive of very dangerous Consequences attending it: For any kind of Evidence may, by that means, be prevented.

Lord High Steward. My Lords, The Gentlemen of the House of Commons may proceed in their Examination of this Witness; and my Lord *Lovat* will be at Liberty to ask what Questions he pleases, in his Cross-examination; and will likewise be at Liberty to call Witnesses to prove this particular Fact, in his Defence, in another Shape; for he may prove this Fact, in order to impeach this Witness's Credit, and probably have as much Effect of it as if it had been properly taken Advantage of.

Mr. Solicitor General. My Lords, I beg this Witness may be asked, when he first came to live in Lord *Lovat*'s Family? and how long he lived with him?

Lord High Steward. Sir, You hear the Question.

R. Fraser. I entered into Lord *Lovat*'s Service in October 1744.

Mr. Solicitor General. How long did you continue with him?

R. Fraser. I continued in his Service till his Lordship and I were taken Prisoners, the 7th of June last.

Mr. Solicitor General. I beg you may inform their Lordships, whether, in the Month of July 1745, you knew of any Information that was given to my Lord *Lovat*, of an Intention of an Insurrection and Invasion; and what Intimation was given of it?

R. Fraser. Some time after the 25th July 1745, I heard a Gentleman came to my Lord *Lovat*'s House, to tell him, That the Pretender's Son was landed somewhere about *Lockaber*. I heard my Lord *Lovat* say, he did not land like a Prince; that he had no Army with him, and only a few Servants.

Mr. Solicitor General. What did my Lord *Lovat* say, upon that Occasion? Was his Son at home?

R. Fraser. He was at home, or was then sent for.

Mr. Solicitor General. Do you know of any Person that was sent by my Lord *Lovat*, to see the Pretender, at that time?

R. Fraser. Not at that time; I can't say that I knew of any.

Mr. Solicitor General. Do you know of any Endeavours that were then used to raise Men upon my Lord *Lovat*'s Estate? And if you do, please to mention the Times.

R. Fraser. I remember, some time after, he dictated a Letter to me, to be sent to Two of the Heads of the Tribes of the *Frasers*.

Mr. Solicitor General. Name them.

R. Fraser. *James Fraser of Foyers*, and *John Fraser of Ferraline*.

Mr.

Mr. Solicitor General. What was that Letter for ?

R. Frazer. To get Men ready to join the Master of *Lovat*.

Mr. Solicitor General. Where were the Men to go with him ?

R. Frazer. The Letter does not particularize that.

Mr. Solicitor General. Do you know of any body that was sent to take Lifts of the Men to be raised ?

R. Frazer. I took the Lifts of the Names of the Men. My Lord *Lovat*'s Chamberlain ordered me to make a Lift of the Names of all the Men capable of bearing Arms, North of Loch *Nefs*.

Mr. Solicitor General. For what Purpose were those Lifts made ?

R. Frazer. To the best of my Knowledge, to join the Master of *Lovat*, with the Pretender.

Mr. Solicitor General. Were such Lifts made out with my Lord *Lovat*'s Privity, or by his Direction ?

R. Frazer. I am sure he was acquainted with it.

Mr. Solicitor General. How are you sure he was acquainted with it ?

R. Frazer. Because I went into the Room, and told him what I was doing ; and that I was writing the Lift.

Mr. Solicitor General. What did he say to you upon that Occasion ?

R. Frazer. I cannot remember now.

Mr. Solicitor General. Pray, did my Lord *Lovat* see the Lift after it was made out ?

R. Frazer. I can't tell ; I returned it to *John Frazer*, my Lord's Factor.

Mr. Solicitor General. Do you know of any Message that was sent or passed between my Lord *Lovat*, and Lord *Loudon*, and Lord President ?

R. Frazer. Yes.

Mr. Solicitor General. What was it about ?

R. Frazer. Several Letters were sent by my Lord *Loudon*, and my Lord President, to my Lord *Lovat*, to dissuade him from entering into the Rebellion.

Mr. Solicitor General. What Answer did my Lord *Lovat* make to these Letters ?

R. Frazer. He said his Son was so obstinate as to enter into the Rebellion ; but that he could not help it.

Mr. Solicitor General. Was that Fact true ? Was the Son so obstinate ?

R. Frazer. No ; I am sure it was not true.

Mr. Solicitor General. Why are you sure it was not true ?

R. Frazer. Because, whilst I was preparing a Letter to the Lord President, which my Lord *Lovat* dictated, wherein he acquainted them of his Son's Obstinacy in going into the Rebellion (which Letter my Lord directed me not to let any body see), his Son the Master came in, and asked me for the Letter ; and I refusing to give it him, the Son took the Letter out of my Hand.

Mr. Solicitor General. Who took it out of your Hand ?

R. Frazer. The Master of *Lovat* took it out of my Hand ; and, after reading it, said, Good God, how is this ! Accuse me behind my Back ! To call me stiff-necked and disobedient ! I will set the Saddle upon the right Horse.

Mr. Solicitor General. Pray repeat the Answer you made last.

R. Frazer. The Master of *Lovat* said, If this Letter goes, I will go, and put the Saddle upon the right Horse, and will go and discover all to my Lord President.

Mr. Solicitor General. What did he mean by putting the Saddle upon the right Horse ?

R. Frazer. That he would go and discover to my Lord President, that his Father, my Lord *Lovat*, had forced him to do what he had done.

Mr. Solicitor General. Did the Son say any thing to my Lord *Lovat* upon that Occasion ?

R. Frazer. Not that I know of. The Words *stiff-necked and disobedient* were left out of the Letter.

Mr. Solicitor General. How came these Words to be left out ?

R. Frazer. It was done by the Master of *Lovat*'s Order.

Mr. Solicitor General. Did you hear any thing that passed between Lord *Lovat* and his Son about his Backwardness in going into the Rebellion ?

R. Frazer. I heard him blame the Master of *Lovat* for being dilatory.

Mr. Solicitor General. Dilatory in what ?

R. Frazer. In raising Men.

Mr. Solicitor General. For what Purpose ?

R. Frazer. To join the Pretender's Son.

Mr. Solicitor General. Do you know any thing of Lord *Lovat*'s sending for People, as Painters, or of any Sort, to prepare his Tents ?

R. Frazer. Yes ; I myself wrote a Letter to his Agent at *Inverness*, who was a Painter.

Mr. Solicitor General. By whose Order did you write that Letter?

R. Frazer. By my Lord *Lovat's* Order.

Mr. Solicitor General. To what Purpose was the Letter wrote?

R. Frazer. It was to order the Agent, or the Painter, to make some Bell-Tents.

Mr. Solicitor General. What did the Painter do in Consequence of that Letter?

R. Frazer. He made them.

Mr. Solicitor General. Did my Lord *Lovat* know of it?

R. Frazer. Yes.

Mr. Solicitor General. How do you know he did?

R. Frazer. Because I was with my Lord *Lovat* when the Man was making them.

Mr. Solicitor General. What are Bell-Tents?

R. Frazer. They are Lodges to keep Arms dry from the Rain.

Mr. Solicitor General. Did you know of any Colours being made?

R. Frazer. Yes; we had one Pair of new ones made, and another Pair mended.

Mr. Solicitor General. About what time was that? and what Month?

R. Frazer. About the Month of *September*, I think.

Mr. Solicitor General. Was it before the First Rendezvous?

R. Frazer. I think it was after the First Rendezvous.

Mr. Solicitor General. Can you give an Account of the Men being rendezvoused, and whether it was done by my Lord *Lovat's* Directions, or under his Authority?

R. Frazer. They were rendezvoused.

Mr. Solicitor General. Where were they rendezvoused?

R. Frazer. Upon that Part of Lord *Lovat's* Estate near *Castle-Downey*.

Mr. Solicitor General. About what time was this? in what Month?

R. Frazer. In the Month of *August*.

Mr. Solicitor General. What was the particular Purpose of their being reviewed then?

R. Frazer. To see who was capable of bearing Arms, and who had any.

Mr. Solicitor General. Were the Officers appointed then?

R. Frazer. No; I believe not.

Mr. Solicitor General. How do you know, that the Prisoner was made privy to this Rendezvous?

R. Frazer. Because they came back to my Lord's House afterwards.

Mr. Solicitor General. Were they in Officers Dress?

R. Frazer. They had white Cockades on.

Mr. Solicitor General. How far was the Place of Rendezvous from Lord *Lovat's* House?

R. Frazer. About a Quarter of a Mile.

Mr. Solicitor General. Were the Persons there Tenants to my Lord *Lovat*?

R. Frazer. They were his Tenants.

Mr. Solicitor General. What Arms had they?

R. Frazer. I can't say: I had my Lord's Liberty to go there and see them; but I did not stay there.

Mr. Solicitor General. Do you know of any other Rendezvous?

R. Frazer. About a Fortnight afterwards there was another Rendezvous.

Mr. Solicitor General. Do you know of any Ammunition, Muskets, or Arms, that were given to the Men?

R. Frazer. I don't know of any Arms that were given them. There was a Barrel of Powder sent from *Inverness*.

Mr. Solicitor General. By whose Order was that done?

R. Frazer. By my Lord *Lovat's* Order I wrote the Letter.

Mr. Solicitor General. What was done with that Powder?

R. Frazer. It was distributed among the Men.

Mr. Solicitor General. How do you know that it was done by my Lord *Lovat's* Order?

R. Frazer. Because the Housekeeper being disgraced, I got the Key of the Place where it was, and saw the Powder and Bullets there.

Mr. Solicitor General. Was the Key delivered you for that Use?

R. Frazer. I told my Lord of my having the Key.

Mr. Solicitor General. Do you know of any Bonnets being provided?

R. Frazer. There were Bonnets provided for them.

Mr. Solicitor General. By whose Order?

R. Frazer. By my Lord *Lovat's*.

Mr. Solicitor General. For what Purpose were they provided?

R. Frazer. They were given to the Men.

Mr.

Mr. Solicitor General. Do you know where the Officers went after the last Rendezvous?

R. Frazer. The Officers came back that Night.

Mr. Solicitor General. Where did they come to?

R. Frazer. They came to my Lord *Lovat's* House.

Mr. Solicitor General. Had they Cockades?

R. Frazer. They had white Cockades in their Bonnets.

Mr. Solicitor General. Do you know for what Sign or Mark they wore white Cockades?

R. Frazer. It was a Symptom of their being People to join the Pretender.

Mr. Solicitor General. Do you know of any thing that happened at my Lord *Lovat's* after the Battle of *Preston-Pans*?

R. Frazer. *Frazer of Dallcraige* came to *Castle-Downey* with an Account of the Battle of *Preston-Pans*.

Mr. Solicitor General. What did my Lord *Lovat* say to him upon that Occasion?

R. Frazer. He said, That his Men should be soon ready to go South.

Mr. Solicitor General. For what Purpose?

R. Frazer. To join the Rebels, I understood.

Mr. Solicitor General. Do you know of any Men passing by my Lord *Lovat's* House?

R. Frazer. My Lord *Cromertie's* Regiment passed by; and he and the *McDonalds*, and several others, were entertained there that Night.

Mr. Solicitor General. Did you hear any thing that passed upon that Occasion; any thing that was said by my Lord *Lovat* upon it?

R. Frazer. Yes, That it was owing to the Master of *Lovat's* Disobedience, that the *Frasers* were not ready as soon as any other.

Mr. Solicitor General. Was there any thing else that passed then, or any particular Healths drank?

R. Frazer. Yes; the Health of the Pretender's Son was drank.

Mr. Solicitor General. By what Name?

R. Frazer. By the Name of Prince *Charles*.

Mr. Solicitor General. Pray at what time did the Master of *Lovat* go and join the Rebels?

R. Frazer. It was between the 10th and 20th of *December* that he went. My Lord *Lovat* was taken Prisoner on the 10th or 11th of *December*, and escaped about the 19th or 20th; and, at the same time, the Master marched with the *Frasers*.

Mr. Solicitor General. Was my Lord *Lovat* extremely displeased at his Son's so Marching? or did he disapprove of it?

R. Frazer. No.

Mr. Solicitor General. Did he send Word for his Son to come back again?

R. Frazer. He did afterwards send for him back, to raise more Men.

Mr. Solicitor General. Do you know of any Person who was concerned in the Rebellion, that, after the Battle of *Falkirk*, came to my Lord *Lovat's* House? and whether any thing passed in Company then, and what it was?

R. Frazer. Yes; there was a *French* Gentleman came, that was said to be the *French* Ambassador.

Mr. Solicitor General. Where did he come to?

R. Frazer. To a Place belonging to my Lord *Lovat*.

Mr. Solicitor General. When was that?

R. Frazer. It was after their Retreat from *Stirling*.

Mr. Solicitor General. Do you know who was there besides?

R. Frazer. There were several others, particularly *Lockiel*, *Keppoch*, *Cameron*.

Mr. Solicitor General. Do you know of my Lord *Lovat's* saying any thing to them about his assisting them?

R. Frazer. He told them, He hoped they would excuse him, on account of his Age and Infirmities.

Mr. Solicitor General. Did he say any thing to shew his Zeal for their Success, as he did not go himself?

R. Frazer. Yes: He said, I cannot go myself; but I will send my only Son, the Darling of my Life.

Mr. Solicitor General. Do you know of any thing that passed between my Lord *Lovat* and his Son after that?

R. Frazer. Yes; the Master came to *Gortuleg*; and my Lord had lately received a Letter from one *Mr. Sheridan*, who had some Office under the Pretender's Son, complaining of my Lord's not getting his Men ready.

Mr. Solicitor General. Do you know of any thing that passed between them in relation to the Men having Leave to go home?

R. Frazer. Yes; my Lord was angry with the Master for giving them Leave.

Mr. Solicitor General. Pray how long was this before the Battle of Culloden?

R. Fraser. This was in the Month of February.

Mr. Solicitor General. Do you know any thing of the Pretender's Son's coming to my Lord's House after the Battle of Culloden?

R. Fraser. Yes; the very Night after the Battle, the Pretender's Son came to my Lord's.

Mr. Solicitor General. Was my Lord Lovat there then?

R. Fraser. Yes.

Mr. Solicitor General. Do you know any thing of what passed between them? or what my Lord Lovat said to him?

R. Fraser. He made some Apology for not joining him in Person.

Mr. Solicitor General. Did he mention any thing to shew his Zeal for him, though he did not join him in Person?

R. Fraser. He said he had sent his Son to join him, whom he loved more than himself.

Mr. Solicitor General. Did he mention his having sent any more?

R. Fraser. Yes; he mentioned his having sent his Clan.

Mr. Solicitor General. Was the Excuse accepted? or what did the Pretender's Son say to him?

R. Fraser. I cannot tell particularly: I do not understand French, and they spoke in French.

Mr. Solicitor General. Did all the Conversation, which passed between them, pass in French?

R. Fraser. No; they spoke sometimes English, and at other times they spoke French.

Mr. Solicitor General. What Language was that Discourse spoken in, which you have given an Account of as to Lord Lovat's Son and Clan?

R. Fraser. It was in English.

Mr. Solicitor General. You have said you did not understand all their Discourse: Pray did you perceive any other Demonstrations of Friendship that passed between them?

R. Fraser. Yes; they embraced one another.

Mr. Solicitor General. Do you know of any Consultation or Meeting of the General Officers of the Rebel Army, which my Lord Lovat had at that time?

R. Fraser. Yes.

Mr. Solicitor General. Who were present?

R. Fraser. There were several Gentlemen present.

Mr. Solicitor General. Name them.

R. Fraser. There was Cameron of Lochiel, John Murray of Broughton, Barrisdale, John Roy Stuart, Glenbucket, and others.

Mr. Solicitor General. How long was this after the Battle of Culloden?

R. Fraser. It was not very long.

Mr. Solicitor General. How long was it?

R. Fraser. A matter of Ten or Twelve Days.

Mr. Solicitor General. Was there any body else there? Was the young Pretender there?

R. Fraser. No; he was not.

Mr. Solicitor General. Do you know any thing of the Conversation that passed then, or the Result of the Consultation?

R. Fraser. No; I was turned out of the Room: I did not hear.

Mr. Solicitor General. Do you know of any Money that was distributed? To whom was it distributed, by whom, and for what Purpose?

R. Fraser. I saw the Pretender's Son's Treasurer give Money.

Mr. Solicitor General. For what Purpose was the Money given?

R. Fraser. To raise Men.

Mr. Solicitor General. Do you know what kind of Money was so given?

R. Fraser. It was French Louisdors.

Mr. Solicitor General. Was you with the Prisoner till the Time he was taken? If you was, give an Account of his Retreat?

R. Fraser. We staid in an Island for a Month; and, when we escaped, we were obliged to take a Boat, to come down a Loch.

Mr. Solicitor General. What was the Name of the Island?

R. Fraser. The Island of Morer.

Mr. Solicitor General. Had you been with Lord Lovat from the Time of the Battle of Culloden to that Time?

R. Fraser. We were in the Island from the Beginning of May till the 7th of June.

Mr. Solicitor General. With what View did my Lord Lovat come there?

R. Fraser. To screen him from the King's Troops, which were then in Pursuit of him, and several others of them.

Mr.

Mr. Solicitor General. Do you know of any thing that passed between the Master of *Lovat* and him at that time?

R. Fraser. I remember the Master proposed it to him to surrender himself to the Duke; but my Lord *Lovat* advised him against it, and said he could not do it consistently with his Honour; and he did not think he had been so mean-spirited as to offer it.

Mr. Solicitor General. Do you know any thing of any Advice that was given by my Lord *Lovat* about the Raising of Men?

R. Fraser. Yes; my Lord *Lovat* was present at *Morer*, where they were speaking of the Raising of Men.

Mr. Solicitor General. Had the Prisoner any Guard that attended him whilst he was in *Morer*?

R. Fraser. Yes; he had a Guard of Twenty Men to attend him.

Mr. Solicitor General. Did they resist any of the King's Forces that might oppose them?

R. Fraser. Not that I know of.

Mr. Solicitor General. By whom were they paid?

R. Fraser. I paid them.

Mr. Solicitor General. By whose Directions did you pay them?

R. Fraser. By my Lord *Lovat*'s Directions.

Mr. Solicitor General. Did you apprehend, that the Master of *Lovat* carried his Men into the Rebel Army without his Father's Permission?

R. Fraser. No; I am very sure he could not.

Mr. Solicitor General. Why are you sure of it?

R. Fraser. Because my Lord *Lovat* is a very strict Man; and none of his Children could have done it without his Consent.

Mr. Solicitor General. Had my Lord *Lovat* a Power over them?

R. Fraser. Yes; he had a very great Power over them.

Mr. Solicitor General. Pray, was the Guard my Lord *Lovat* had, armed?

R. Fraser. Yes.

Mr. Solicitor General. You say there was no Opposition given by them to any of the King's Forces?

R. Fraser. No; I think there was Two or Three of them fired: But my Lord *Lovat* sent me out to tell them not to fire.

Mr. Solicitor General. Do you know any thing of my Lord *Lovat*'s soliciting a Commission from the Pretender, to be Lieutenant-General of the *Highlands*, or a Patent to be Duke?

R. Fraser. I remember, some time after I went into my Lord *Lovat*'s Service, which was the 18th of *October* 1744, I saw in the Desk a Copy of an old Patent, which gave the Title of Duke to Lord *Lovat* only.

Mr. Solicitor General. What other Papers did you see there?

R. Fraser. Some time after, I saw a new Patent, where the Title was to descend to the Heirs Male of the Family.

Mr. Solicitor General. Did you hear from my Lord *Lovat* how he obtained the Patent?

R. Fraser. I have heard my Lord *Lovat* say, That his Patent lay in the Hands of one *Drummond* in *France*.

Mr. Solicitor General. Did he say what *Drummond*?

R. Fraser. To the best of my Knowledge, he said it was *Drummond* of *Bohaldie*.

Mr. Solicitor General. Do you know any thing of any other Commission which my Lord *Lovat* had?

R. Fraser. Yes; I saw a Commission for his being Lieutenant-General of the *Highlands*.

Mr. Solicitor General. Where did you see that Commission?

R. Fraser. Lying upon a Table in my Lord's Room. I read it, and made a Copy of it by my Lord's Order.

Mr. Solicitor General. Are you sure whether he himself ordered you to copy it?

R. Fraser. I am sure he ordered me to make a Copy of it.

Mr. Solicitor General. Had you any other Discourse with him about it? Did you hear with what View he had got it?

R. Fraser. No; I had no other than what I have now informed you of.

Mr. Solicitor General. Do you know of any Complaint my Lord *Lovat* ever made about an Independent Company being taken from him?

R. Fraser. I heard him complain, that the Court did not use him civilly in taking away his Company.

Mr. Solicitor General. When did you hear him make that Complaint?

R. Frazer. Frequently in Company, in speaking upon the Subject.

Mr. Solicitor General. Pray what did my Lord *Lovat* say upon that Occasion?

R. Frazer. I heard him say, That it was intirely owing to General *Wade*; and that he did not blame the Government.

Mr. Solicitor General. Did he draw any Consequences from that?

R. Frazer. I have heard him speak extraordinary well of his late Master King *George*.

Mr. Solicitor General. What more did he say about this Treatment?

R. Frazer. He said, That the Court used him so ill, that he could not help doing what he was doing.

Mr. Solicitor General. What was he then doing?

R. Frazer. Raising Men to join in the Rebellion. He said he had no Dislike to his present Majesty, but only to the Persons who took away his Commission.

Mr. Solicitor General. Pray what do you apprehend was the Meaning of that Expression of the Master of *Lovat*, that he would go to the Lord President, and discover all?

R. Frazer. I understood, that he meant, that he would go and join his Majesty's Forces.

Mr. Solicitor General. My Lords, We have done with the Examination of this Witness for the present. We shall have Occasion by-and-by to call him, to prove an Exhibit or Two.

Lord High Steward. My Lord *Lovat*, The Gentlemen of the House of Commons have gone thro' their Examination of this Witness: Would your Lordship ask him any Questions?

Lord Lovat. I am not able to ask him any Questions.

Then the Witness, by Order of the Lord High Steward, withdrew; and the Lord High Steward returning back to his Chair, the House was moved to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, Ay.

The House was accordingly adjourned to the Chamber of Parliament; and the Lords, and others, returned in the same Order, in which they came down: And the House being there resumed,

Ordered, That this House will proceed further in the Tryal of *Simon Lord Lovat* in *Westminster-Hall*, To-morrow, at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by *Mr. Eld* and *Mr. Thurston*, to acquaint them therewith.

Ordered. That the Lieutenant of the *Tower of London*, or his Deputy, do take back the said Lord *Lovat*; and bring him again to the Bar of this House in *Westminster-Hall* To-morrow, at Eleven of the Clock in the Forenoon.

Tuesday the 10th of March, 1746.

The SECOND DAY.

THE Lords, and others, came from the Chamber of Parliament into *Westminster-Hall*, in the same Order as on *Monday*: Where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court; and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes, Lieutenant of the *Tower of London*, Bring forth your Prisoner, *Simon Lord Lovat*, to the Bar, pursuant to the Order of the House of Lords, to you directed.

The Deputy-Governor of the *Tower* brought the Prisoner to the Bar, in the like manner as before. And then he kneeled down.

Lord High Steward. Your Lordship may rise.

Then the Lord High Steward asked Leave to go down to the Table: Which was done.

Lord High Steward. Gentlemen of the House of Commons, You may proceed in your Evidence.

Mr. Noel. My Lords, The next Witness we beg Leave to call, in Support of the Charge, is *John Murray of Broughton*.

John Murray of Broughton came into Court.

Mr. Noel. My Lords, We desire that he may be sworn.

Lord Lovat. My Lords, I have Objections against this Witness. One or Two I apprehend to be essential.

Lord High Steward. Make your Objections.

Lord Lovat. As I cannot read myself, I desire your Lordships will give Leave to the Clerk to read them.

Clerk reads.

My Objection is, That he is attainted by an Act of Parliament made in the last Session, Page 443; and that he did not surrender himself before the 12th of July last.

Mr. Attorney General. My Lords, I observe, that the noble Lord at the Bar said, That he had several Objections to the examining this Witness; and that One or Two of them were essential; but the noble Lord has not mentioned more than one. I presume, my Lords, it would be proper that he should name all his Objections at once, that the Managers may have an Opportunity of answering them all, and receiving your Lordships Judgment upon the Whole: Therefore, if he has any other Objections to offer, it would be proper he should mention them now to your Lordships.

Lord Lovat. My Lords, I submit it to your Lordships, that That is a very odd Proposition. I give your Lordships an essential one now; and when that is answered, I have another. I am not to be directed by those who are my Persecutors.

Lord High Steward. My Lord *Lovat*, You are not to be directed by your Accusers, but by the Lords who are your Judges; and the Course of Proceeding in this, and all other Courts, is, That a Person who objects to any Witness, should name all his Objections at the same time; and it is the more material in this Court, as it tends to prevent the Trouble of making several unnecessary Adjournments.

Lord Lovat. My Lords, As this Objection is very essential, I pray that it may be answered before I make another.

Lord Talbot. My Lords, If this is a material Objection to the Witness, then there will be no Occasion for any other; but if it is an immaterial one, then your Lordships may go into any other; but the Way proposed by the Managers may be very detrimental to the unhappy Person at the Bar.

Lord High Steward. Your Lordships hear what is proposed; and the Question is, Whether the noble Lord at the Bar shall name all his Objections now, or take them up by One.

Sir William Yonge. My Lords, I should hope, that, in any Course of Proceeding, where Objections of this Kind are made, they should be made all together; for if they are made separate, we must consequently make distinct Answers to them all; which may oblige your Lordships to adjourn often to the Chamber of Parliament; which will create a great and unnecessary Delay of Time: And, my Lords, there can be no Objection to his naming the Whole at once, since they will all be distinctly considered by your Lordships, and undoubtedly receive distinct Answers. I therefore humbly insist, That he may be obliged to name all his Objections at once.

Mr. Noel. My Lords, What we are now upon, is no Point of Law at all: It is singly, Whether the noble Lord at the Bar, as is usual, should not name all his Objections at once? When he does name them, then to such as are clear Points of Law, he must be heard by his Counsel: But, at present, my Lords, we are upon a Question concerning the Course of Proceeding, Whether he shall name them all at once? that they may be taken into Consideration at the same time.

My Lords, One thing struck me in a very extraordinary manner: It was said by the noble Lord at the Bar, That he was not to be directed by his Persecutors. My Lords, We are no Persecutors; we persecute no Man; we are entrusted by the Commons, who carry on this Prosecution against the noble Lord at the Bar for Treason; and we prosecute for the Preservation of the King's Government, and the Laws of the Land.

Lord Lovat. My Lords, I said I was not to be directed by those who accused me. Your Lordships cannot expect, I can say what I have to offer in an eloquent Manner. My Lords, Should the Saving of a little Time be a Reason for taking away a Person's Life? I hope these will not act like the Parricides who took off the Head of both Kingdoms in a Day, by their Prosecution. I am a Peer of this Land; and I think no Excuse of saving Time should be allowed as a Reason to destroy me.

Lord

Lord High Steward. My Lord *Lovat*, The Lords will use all the Deliberation, and give you all the Time that is requisite for your Defence; but I must beg your Lordship will have so much Consideration as to keep your Temper, and not suffer yourself to be hurried into Passion; for that may greatly prejudice you in making your Defence. Your Lordship will find the Advantage in your Defence, by keeping your Temper.

Lord Lovat. I give your Lordship my humble Thanks: And, since your Lordships will not allow me Counsel, I have spoke the little Nonsense I had to say; but now your Lordships shall hear me say nothing out of Temper.

Lord High Steward. My Lord *Lovat*, The Question now is, Whether you shall name all your Objections at once? I must acquaint your Lordship, that That is the Rule in the Courts below, That if several Objections are made to a Witness, they are all named at once, in order to prevent unnecessary Delays.

Lord Lovat. My Lords, To shew how much I desire to save Time (tho', according to the Course of Nature, my Time can be but short), I am so far from desiring to give your Lordship's Trouble, or to prolong Time, that I do insist upon this Objection to the Witness, and rely upon it as the only material Objection.

Then the Lord High Steward directed the Act of the last Session of Parliament, for the Attainder of several Persons, and, amongst others, of *John Murray of Broughton*, to be read: And the same was read accordingly, by the Clerk at the Table.

Lord High Steward. Gentlemen of the House of Commons, You hear the Objection made by my Lord *Lovat* against this Witness: Which is, That he stands attainted by the Act of Parliament just now read; and that he did not surrender himself before the 12th of July, the Day prescribed by the Act. And this being a Question of Law, he desires to be heard by his Counsel to it.

Mr. Attorney General. My Lords, We have that which will appear to your Lordships, to be a plain and a clear Answer to it. It appears, that this is an Act of Parliament for attainting several Persons, upon a certain Condition; which is, That if those Persons do not, before the 12th of July 1746, surrender themselves to One of his Majesty's Justices of the Peace, then every one, so not surrendering himself, shall be adjudged to be, and is thereby, attainted of High-Treason. And our Answer to it is this, That the Condition has been complied with by *Mr. Murray*. I shall readily own, That, supposing the Condition had not been complied with, according to Law, in that Case *Mr. Murray*, being an attainted Person, could not be a Witness, unless he had been pardoned. But our Answer to that will be, That he hath surrendered himself; and the Surrender will appear upon Record; and the Manner of it is this: The last Term, *Mr. Murray* was brought by *Habeas Corpus* to the Bar of the Court of *King's-Bench*; and a Transcript of the Act of Parliament being by *Mittimus* and *Certiorari* brought into that Court; and *Mr. Murray* brought up, and personally appearing before the Justices of the Court of *King's-Bench*; and being asked by them, What he had to say, why he should not suffer Death, according to Law? upon a Supposition, that he was attainted upon that Act of Parliament; he pleaded in general, That he was one of the Persons named in the Act; and that, long before the 12th of July 1746, to wit, on the 28th of June then last, he did, at *Edinburgh*, in due Manner, according to the Meaning of the Act, render himself to *Andrew Fletcher* Lord Justice Clerk, and one of his Majesty's Justices of the Peace: And he says, That the said *Andrew Fletcher* had then Authority to admit him to make such Surrender. He then states, That on the said 28th of June, in Consequence of this Surrender, he was committed by the Lord Justice Clerk to Prison, according to the Directions of the Act of Parliament; and that he had ever since that Surrender remained in Custody, and still continues in Prison, and is ready to take his Tryal, and submit himself to Justice. My Lords, He having pleaded this Plea, the Attorney General, by virtue of a Warrant from his Majesty, confessed the Plea to be true: Upon which the Court of *King's Bench* made a Record of it: He was remanded back to Prison, and there remains to answer, according to Law, when he shall be called to an Account for this High Treason. My Lords, We have the Record, and beg it may be read.

Lord Lovat. My Lords, I object to the reading this Record, because it is no Evidence against me; and I beg my Counsel may be heard to it. I am a Stranger to the Record, which is grounded only upon the Confession of the Attorney General, unsupported by any Proof; and I desire my Counsel may be now heard.

Mr. Attorney General. My Lords, As to the Objection against reading this Record, I apprehend there is no Foundation for it. It is a Record of the Court of *King's Bench*, concerning the Person to whom the noble Lord at the Bar has objected, as being attainted; and, upon the Face of the Record, it will appear, that he is not a Person attainted. As to what

the noble Lord says, That he is no Party to the Record, It is true he is not ; but it is a Record notwithstanding. It is a Record upon the Point in Question, to shew whether or no the Person who is proposed as a Witness, is attainted: And there is no other Way by which he can have an Opportunity, in a Court of Justice, to avoid that Attainder, but by being brought into that Court, and asked, What he has to say why Execution should not be awarded against him, upon the Foundation of his being attainted by the Act? The Law gives him a Right to make his Defence against that Demand of Execution. He has done it, by averring a Fact of a Surrender, pursuant to the Act ; and the Attorney General having confessed that Fact, it appears, that the Witness is not attainted ; and the whole is (as it ought to be) entered on Record, which is the proper Evidence of his not being attainted ; and therefore must be proper to be read to your Lordships, to answer an Objection, founded on a Supposition, that he is, tho' the Prisoner is not, nor could possibly be, a Party to it.

Lord High Steward. My Lord *Lovat*, You have heard what the Managers say : Do you now insist upon the Objection to the Reading of the Record ? or will you reserve your Objection to the Witness till after the Record has been read ?

Lord Lovat. I desire, that it should not be read.

Lord High Steward. Do you desire, that your Counsel may be heard to that Question, as a Point of Law ?

Lord Lovat. Yes, I do.

Mr. Attorney General. To be sure, my Lords, if it is any thing, it is a Point of Law ; but your Lordships will judge whether it is a Point of Doubt ; and therefore deserves to have Counsel heard to it.

Lord High Steward. If my Lord *Lovat* insists upon it, his Counsel must be heard to this Point.

Mr. Forrester.

My Lords,

I AM, by your Lordships Order, assigned Counsel to the noble Lord the Prisoner at the Bar, to advise and assist him in Matters of Law. The Objection that the noble Lord has made to the reading this Record, is, That it is grounded upon a Plea of Mr. *Murray*, confessed by his Majesty's Attorney General, to which the noble Lord is no Party ; that nobody is bound by that Confession but the Crown ; and consequently, that it cannot be read against the noble Lord at the Bar. And, my Lords, I apprehend, that a Plea resting merely upon the Confession of the King, and which, in Fact, may or may not be true, ought not, in point of Law or Justice, to conclude any Party but the Crown, in whom alone resided the Power of confessing it.

My Lords, I am ready to acknowledge, that the Law of *England* gives the greatest Credit to Proofs by Matter of Record ; and that they are Proofs of the highest Nature : But, my Lords, there is a great Difference between Records grounded upon the Confession of the Party, and Records upon Verdicts.

The Reason is, That, in Records grounded upon Confession, the Party may come in, and suggest a Thing that is true or false : And it would be extremely hard, in regard to Third Persons, who may be injured by it ; I say, it would be extremely injurious, if they had no Method to be let in, to falsify a Plea thus confessed. But where a Record is grounded upon a Verdict, and Judgment given thereupon, the Case is very different, because there is always a full Hearing before a Court of Justice ; the Facts are proved by Testimony of the Witnesses ; and the Jury give their Verdict upon such Proofs : So that both the Matters of Fact and Law, if any arise, being fully debated and determined, it is highly reasonable, such Proceedings should be conclusive, upon the Maxim, *Expedit reipublicæ ut sit finis litium* ; since, if it was not, every Fact might be called in question over and over again ; and so Courts of Justice would never come to an End of the Business before them. My Lords, The Distinction that I make is not purely of my own Imagination ; your Lordships will find it in the best Writers on the Crown Law. My Lord *Coke*, in his *Third Inst.* fol. 231 and Lord Chief Justice *Hale*, in the First Volume of his *History of the Pleas of the Crown*, fol. 361. tells us, That if a Tenant in Fee aliens his Lands, and then is attainted of Treason, by Verdict upon an Indictment, supposing the Offence committed before the Alienation, the Alienee cannot falsify the Attainder, upon a Supposition, that there was no Treason committed before the Alienation ; but that, had the Attainder been by Confession, the Alienee might falsify the Attainder in the very Point of the Treason, there being nothing conclusive done by the Alienor. This, my Lords, I apprehend, is extremely strong to the present Purpose : Your Lordships will be pleased to observe how far it goes ; it respects the Crown in point of Interest, the Lands actually forfeited to and vested in the Crown by the Attainder ; which yet being grounded only on the Confession of the Party, cannot operate to injure a Third Person, but he may set it aside, and recover his Lands again, notwithstanding the Record by which it appears

appears, that the Alienor committed Treason, and sold the Lands after the Treason actually committed. My Lords, I am aware of an Objection that may be made: It will perhaps be said, That it was in the Power of the Crown to have fully established Mr. *Murray's* Credit, by taking another Method, that of granting him a Pardon; which would have removed all Objections. My Lords, I grant it would; and had it been done, the noble Lord at the Bar, nor his Counsel, would not have troubled your Lordships with any Objection. But, my Lords, there is a very wide Difference between the two Methods: A Pardon takes away, as Lord *Hobart* expresses, both *penam & reatum*; it obliterates the Crime as much as if there had been no Crime at all; and when that has been once declared by the Crown, it is conclusive to all People: A Pardon removes all Objections to the Person, and to his Character. But the present Case is extremely different; for the Substance of *Murray's* Plea, though confessed by the Attorney General, still remains a Matter of Doubt, and a Matter of Evidence. My Lords, That Mr. *Murray* appeared in the Court of King's Bench, that he pleaded he was the Person named in the Act, so far is true, and so far I allow: But, my Lords, notwithstanding he pleaded, that he surrendered on the 28th *June*, and was then committed to Prison, this may be false; Evidence might have been produced to the contrary; and, upon that Evidence, it might have appeared, that he did not surrender before the 12th of *July*.

My Lords, should that happen to be the Case, in what Condition would a Third Person be, was this Proceeding to be conclusive against him? It is a Maxim in Law, that *Actus legis nemini facit injuriam*. The Maxim holds equally strong as to the Acts of the Crown; and, if our Books are not so explicit on the latter as the former Head, their Silence proceeds from the great Modesty of our Laws, which, as they repose the highest Trust in the Honour and Justice of the Crown, won't suppose its Prerogative will ever be turned to the Subject's Detriment: And indeed right Reason tells us, that neither the Acts of the Crown, or of any Party whatsoever, ought to affect a Third Person, who was a Stranger to them, and who has had no Opportunity of controverting them.

My Lords, I would trouble your Lordships with a very short Case to illustrate what I am contending for: A Copyholder is attainted, and flies, and the Land escheats to the Lord: Suppose that he is afterwards taken, and brought up into the Court of King's Bench, and there pleads, that he is not the Man; and that Plea is confessed by the Attorney General; would this be Evidence against the Lord, who had acquired a Property in the Land by Escheat? Would he be concluded by that Proceeding? Would the Tenant, by saying, I have pleaded I am not the Man, and the Attorney General has confessed it, avail himself against the Lord? My Lords, here is to be an Interest divested out of a Person by a mere Confession of the Parties, in a Proceeding to which he is a Stranger, and was never admitted to litigate: And as the Lord by Escheat would not be concluded in the Case I just now put, I do not see any Distinction can be made between that and the present.

The noble Lord at the Bar has a Right to object to every Person attainted; and that Right cannot be taken away by any Proceeding between other Persons, to which he is no Party.

My Lords, the Case is rather stronger here; because, by the same Reason that Mr. *Murray* is enabled to be a Witness, by having pleaded, that he surrendered within the Time limited by the Act, and that Plea confessed by the Attorney General, if a Person actually attainted by Verdict and Judgment (which is the highest Kind of Attainder) should, upon any Occasion, be brought up to the Court of King's Bench, and asked why Execution should not be awarded against him, that he should deny, as happened in *Okey's* Case, his being the same Person, and that Denial be confessed by the Attorney General, this Man, whom the Law disables by his Attainder for an Offence of the highest Kind, from giving Testimony in any Case, the Attorney General would, by his bare Confession, restore to Credit, and enable to give Evidence in any Case.

This would be investing the Attorney General with a legislative Power; and that, I believe, your Lordships will scarcely think proper or reasonable.

Mr. Ford.

My Lords,

I Am likewise assigned of Counsel for the noble Lord at the Bar. And the Question before your Lordships is, Whether the Record, now produced, can be received in Evidence to repel the Objection that arises from the late Act of Parliament to Mr. *Murray's* Evidence.

By that Statute, he is actually attainted, unless he surrendered before the 12th of *July* 1746; and, if attainted, it is admitted by the Gentlemen of the House of Commons, that he is incapable of being a Witness.

My Lords, the great Consequence of Questions of this Nature is obvious to every one, the Justice of all judicial Determinations depending intirely on the Veracity of Witnesses, who
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are to prove the Facts, upon which such Determinations are to be founded: And there can scarcely arise a Question relating to Evidence of greater Importance to any Man, than the present to the noble Lord at the Bar, whose Estate, Life, and Honours, depend on the Evidence that may be received against him; and therefore your Lordships will be particularly cautious that he shall not be affected by any but legal, unexceptionable Witnesses.

As to the Record now offered to be read, it consists only of a Plea by Mr. *Murray*, that he surrendered in due time; which Mr. Attorney General has thought proper to confess: And it is argued, That this Plea and Confession are proper Evidence, that such Surrender was made, and the Provision of the Act, so far as concerns Mr. *Murray*, absolutely defeated.

My Lords, how far such a Proceeding may bind the Crown is not material in the present Question; but whether it shall conclude the noble Prisoner, who is an absolute Stranger to it, and who never had any Opportunity of contesting the Truth of the Fact, is of the utmost Importance. The Attorney General, by his Office, prosecutes and defends the Causes of the Crown, and, as such, may make many Admissions to bind the Crown; but it would be extremely inconvenient, if such Admissions should conclude any body else. In some Cases they are totally disregarded; and therefore, if Things are confessed as Errors in a Record, which appear not to be Errors, the Court, where such Record is depending, is bound to give Judgment against such Confession, and according to Law.

So, if a Matter of Fact is offered to be admitted, which the Court knows to be otherwise, it seems to be their Duty to reject such Admission; and therefore suppose, upon the Statute of *Edw. VI.* one outlawed for Treason should be brought into the King's Bench, in order to have Execution awarded upon the Outlawry, and should plead, what the Court knows to be false, That he surrendered himself within the Year to the Chief Justice, according to that Statute, and the Attorney General should be disposed to confess it, ought not the Court to reject such an Admission? Or must they be concluded by what is well known to be untrue? Certainly the Court would not suffer such an Attempt to prevail.

In the present Case, there is nothing offered to your Lordships to prove Mr. *Murray's* Surrender, but the Record of what passed between him and the Attorney General in the King's Bench; and, if this Record is permitted to be read, though the Contents of it should be absolutely untrue, yet, when once read, it will be conclusive Evidence of the Fact it imports, and no Proof can be admitted to contradict it; and, if it is Evidence to be received on this Occasion, it must be Evidence in all Courts, and on all Occasions, where a Question may arise about Mr. *Murray's* Attainder.

My Lords, Mr. *Murray* may have Estates, which, by the Custom of the Manors where they lie, or by the Grant of the Crown, may belong to the Lords of those Manors. If his Surrender was not made in proper Time, all such Estates are forfeited to such Lords; and yet, if this Record is to be admitted, it will be Evidence, that cannot be contradicted by them, and must divest those Rights and Estates, which, by this Attainder, they were lawfully intitled to.

But the Mischief of permitting such a Record to be read will not stop here: For Purchasers likewise must be concluded by it; and therefore, though Lands may have been long since sold and enjoyed, under a Title arising from an Attainder of the same Nature with Mr. *Murray's*, yet, if this amicable Proceeding between the Attorney General and the Party attainted, is to prevail, no Purchaser, even at any Distance of Time, can be secure.

In this Light, the Point seems of very extensive Consequence: For it is to give the King's Attorney Power to do more by the Admission of a Fact, which perhaps may not be true, than the King, by a Pardon, can effect: For the King's Pardon cannot restore Lands forfeited to others; whereas, if the present Attempt should succeed, the Rights and Titles of Strangers may be destroyed, though never so justly founded.

My Lords, whether Mr. *Murray* surrendered, or not, is a Matter of Fact capable of Proof, is a Fact of the utmost Importance to the Prisoner; and therefore, as the Rule of Law is general, That nothing done or transacted between Two Persons shall prejudice a Third, who does not concur in the Act, nor has an Opportunity of contradicting it, the present Record, which, for any thing apparent, may be an intire Fiction, ought not to be received.

And, my Lords, supposing there was a Possibility of proving this Fact by Matter of Record, yet, by the constant Rule of Evidence, the Record produced seems improper to be read; because it is not the best Evidence the Nature of the Thing will admit of, and, for that Reason, is not the proper Record to prove the Point in question.

That the Judge or Justice, to whom Mr. *Murray* surrendered himself, made a Record of such Surrender, cannot be doubted. It was his Duty so to do, and must be presumed to have been done; and therefore, if this Fact is proper to be proved by any Record, the Original made by such Magistrate, who took the Surrender, ought to be produced.

My Lords, it may be said, this Record in question imports an Admission by the proper Officer of the Crown, of a Fact which he must be supposed to have inquired into, and has therefore admitted, because he finds it to be true.

My Lords, this Answer might have been given, if Mr. Attorney had, at this Bar, offered originally to confess the same thing.—And suppose the Record, now attempted to be read, had never existed, and, upon an Objection to Mr *Murray's* Testimony, the Attorney General had said, Here, I have the King's Warrant to confess, that he surrendered before the 12th of July;—would your Lordships have received such an Admission?—Would you conclude yourselves by the Concession of a Fact, without knowing whether it was so, or not?—Would the Court have suffered the Force of an Act of Parliament to have been defeated by such an Acknowledgment?—Or, would not clear and positive Proof have been required of an actual Surrender?

My Lords, if it could, upon what Reason can such a Confession in the King's Bench, in an Inferior Court, in the Absence of the Prisoner, who may be prejudiced by it, be received in Evidence against him?—If it is true, that Mr. *Murray* surrendered in proper Time, it may be easily proved; if it is not, the present Method, by which it is attempted to be proved, is a certain one to draw the Court into an Error about it.—Your Lordships must perceive the Danger of allowing such a Proceeding; how mischievous it may be to the Prisoner, to Lords of Manors, to Purchasers, to all Strangers, who never can have an Opportunity of disputing the Truth of it:—And therefore, whatever Effect it may have between the Crown and Mr. *Murray*, it is humbly submitted, that it ought not to be read against the Lord at the Bar.

Mr. *Hamilton Gordon*.

My Lords,

I Have likewise the Honour to attend your Lordships, as one of the Counsel for the noble Lord at the Bar, whose Province it is to lay before your Lordships, and enforce, with all humble Submission, what may occur to them in his favour in point of Law: But the Two learned Gentlemen, who have gone before me, have spoken so fully, and discharged their Duty so well, that I should trespass upon your Lordships Time, and also do them Injustice, if I consumed much of it. Besides, my Lords, I am too diffident of my own Abilities to speak long upon a Question, which is involved in the particular Laws of this Country; and therefore I shall, with your Lordships Indulgence, confine my Endeavours to serve my Client, to a few general Observations, which, I humbly think, must naturally occur to every Man upon that Point, which the noble Lord at the Bar has taken the Liberty to propose to your Lordships by way of Objection.

The noble Prisoner at the Bar has objected, That Mr. *Murray* is not a competent Witness against him; or, in other Words, that, according to the Rules of Law, his Evidence ought not be received. And, to maintain that Position, he has laid down another, namely, That the Record of the Court of King's Bench, which proceeds singly upon the bare Admission of his Majesty's Attorney General, unsupported by any Proof, ought not to be read as Evidence of Mr. *Murray's* Surrender, so as to qualify him to give Evidence upon this Tryal.

As to the First, I humbly apprehend it to be wholly unnecessary to use any Arguments to prove, that, if those Proceedings in the King's Bench did not stand in the Way of the noble Lord at the Bar, Mr. *Murray* must, of course, have been rejected as an incompetent Witness.

It remains therefore only to be considered, Whether such Proceedings, transacted only between the Crown and Mr. *Murray*, can affect the Interest of a Third Person.

My Lords, the Consequences of this Question are of the greatest Importance to the Subjects in general; and although the noble Lord is more immediately concerned in it, yet if it should be determined, that this is proper Evidence to affect him, the like Evidence must be received against every other Subject of *Great Britain*; for the Law cannot distinguish between him and others: And I beg Leave, my Lords, to say, that it appears from the Authorities, which have been cited by the other Gentlemen, and which have always been considered as of the greatest Weight in this Country, that the Admission of the Attorney General, or any other, cannot affect a Third Person; and I take it, my Lords, to be a general established Rule, that the Interest of one cannot be affected by the Admission of another.

My Lords, I apprehend, that my Lord *Coke's* Sense of this Matter is so extremely clear and obvious, that it requires no Explanation; and so is the Opinion of another great Lawyer, my Lord Chief Justice *Hale*.

My Lords, the Law gives an Opportunity to falsify the Verdict of Twelve Men, where a Third-Party, from the Want of it, may be injured only in a pecuniary Matter; how much more reasonable is it therefore that this kind of Agreement should be set aside, and held of no Consequence, in a Case where the Life, Fortune, and Honour, of a noble Lord is concerned?

My Lords, I would humbly ask, What Kind of Acquittal was this? Not an Acquittal by Verdict, the legal Acquittal in this Kingdom; but by a bare Consent; a Consent that surely has not Force enough to repeal an Act of Parliament.

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My Lords, the only Way the Act of Parliament left for Mr. *Murray* to avoid the Consequences of an Attainder, was the Performance of a Condition; that is, surrendering himself within a Time limited.

Now, I would suppose, that this Act had been a Deed granting an Estate on a certain Condition, must not that Condition have been performed truly and effectually? Certainly it must, by the Rule laid down by Lord *Coke*. Shall not Acts of Parliament therefore be as strictly complied with as common Deeds and Conveyances? Surely the Gentlemen of the House of Commons will hardly deny it. Consequently the Attorney General could not, by any Consent of his, make this Record in the King's Bench tantamount to an actual Surrender.

Suppose, my Lords, the Act had attainted Mr. *Murray* of Felony, instead of Treason, could this Admission of Mr. Attorney General have deprived the Lord of the Lands which would have escheated to him? No, my Lords, it could not, if any Regard is to be paid to the Rule laid down in 5 *Coke* 96. That the Estates of Third Persons shall not be divested by colourable or covinous Payments, but by such as are true and effectual. And what are Payments but Performances of Conditions? And the same Law that guides one, will the other.

The Fact is not as the Record states it; and the Attorney General's Consent, which is the *Fiat* for this Record, was a Consent after the Impeachment of the noble Lord. I wish it rather had preceded it.

My Lords, if Mr. *Murray* had held by Copyhold from the noble Lord at the Bar, and had been attainted, the noble Lord would have been intitled to the Escheat or Forfeiture of those Lands; and no Admission of the Attorney General's could defeat him of it, any more than it could in the Case of a Forfeiture of Lands in a County Palatine, where the Grantee of the Crown became intitled to the Benefit of it. Shall therefore, my Lords, such Admission be permitted to affect the Life, Honours, and Fortune, of the noble Lord at the Bar? or, indeed, of any other in his unhappy Situation? No, surely; for it is against the common known Principles of Law, and of Reason too, that a Man shall be attainted as to some Circumstances, and free from Attainder as to others; that he shall be incapable to hold his Lands or Chattels, and yet be restored in Credit, so as to affect the Life of an innocent Man; for such, till Conviction, every one is, by Law, presumed to be: I say, my Lords, this is a Construction so unprecedented and new, that, we hope, it will never receive the Sanction of your Lordships.

My Lords, I hope your Lordships will never countenance the Admission of such an Evidence, an Evidence who is so strongly agitated by the Hope of Pardon, and Fear of Punishment, that, to procure the one, and avoid the other, he may give up all Sense of Honour, Humanity, and Justice.

My Lords, as the learned Gentlemen, who spoke before me on the same Side, have made it unnecessary for me to add any thing more, I shall not give your Lordships any further Trouble at present; and I beg your Lordships Pardon for that which I have already given you. But, if any Reply should be necessary to what shall be offered by the Gentlemen of the House of Commons, I hope we shall have your Lordships Indulgence.

Lord High Steward. Gentlemen of the House of Commons, You may proceed.

Mr. Attorney General.

My Lords,

THE Managers do not dispute the Prisoner's Right to any good Objection against the Competency of the Witness, or insist, that it is not equally proper before your Lordships on this Impeachment, as it would be on a Tryal in the ordinary Courts of Justice. But they dispute the Validity of the Objection, upon its own proper legal Foundation.

As the Objection is to the Reading this Record, the mere Stating of the Question will be an Answer to it, and obviate or refute every Argument used in Support of it.

The original Objection was against Mr. *Murray*'s being examined as a Witness, upon the Supposition of his standing attainted of High Treason by the late Act, in not surrendering within the Time prescribed. The Managers allowed the Consequence, if the Allegations of his Attainder were true, as that would render him infamous, not as it would prove him guilty of Treason; for the Guilt alone, without the Attainder, would not render him incompetent, it being a clear established Point, that even a *particeps criminis* may be a Witness to prove the Guilt of those, who joined with him in the same Crime: And your Lordships, in the late Tryal of the Lord *Balmerino*, admitted that Sort of Evidence. But the Managers answered the Objection, by denying the Attainder; and produced this Record, to shew the Surrender pursuant to the Act, which attaints him only on Condition of his not surrendering within the Time limited. This Record is of a Proceeding commenced on the Part of the

Crown,

Crown, on the Foot of this very Act, in the proper Court of Justice, against the Witness, and defended, on the Part of the Witness, by this Surrender; and that Defence and Surrender confessed by the Attorney General, by Warrant from the Crown; and this allowed by the Court, who, instead of awarding Execution against him, remanded him to Prison, where he now remains, forthcoming to Justice, according to the Act.

Now, to say that such a Record, relating to the precise Point in question, cannot be read to disprove the supposed Attainder, and support the Competency of the Witness, would be to deny one of the first Principles of Evidence; and therefore the Counsel, aware of the Absurdity, have not ventured in Terms to assert a Proposition so contrary to the known Law of the Land, as that such a Record is not proper to be read; but seem rather, in the Way of Argument, to deny the Consequence of it, when read, and have insisted on Reasons that tend to shew, that it is not conclusive Evidence; and therefore, that the Fact of the Surrender may be still controverted by Evidence on the Side of the Prisoner, rather than that it is no Evidence at all.

Though this is more properly a subsequent Question, and a very different one in its Nature, yet, in the present Case, it is really, and in Effect, the same, and the necessary Consequence of the other: For to insist, that this Record is not conclusive Proof of Mr. *Murray's* not being attainted by that Act, must proceed on this Supposition, that he may still be held attainted under the Act, notwithstanding this Record. But, I presume, your Lordships will upon no Terms be induced to admit of that Suggestion, when it is considered, that the certain Effect of it must be, that he may be called up again for Execution, and put a Second time on the Defence of his Life against the same Charge.

But, to consider the Grounds, on which the Objection has been attempted to be supported,

There are Two general Reasons insisted on; one, That the Surrender insisted on in Behalf of the Witness, when he was brought before the Court of King's Bench, was neither proved to the Court, nor found by a Jury; but only confessed by the Attorney General: The other, That the noble Lord was himself no Party to the Record; and therefore not to be affected by it.

As to the First, in order to support that Reason, a Distinction is attempted to be set up between the Case of a Fact, on which a Judgment is grounded, appearing by a Verdict or Evidence, and where it appears only by the Confession of the Party; and it is said, That, in the former Case, it may, but, in the latter, cannot, be conclusive to any other Persons, but those who were Parties.

And, for this Purpose, the Authorities of my Lord Chief Justice *Coke* and Lord *Hale*, and others, are cited, to shew the Difference, in point of Consequence to Third Persons, between an Attainder by Verdict, or by Confession; that, in the one Case, the Crime may be disputed by a Purchaser under the attainted Person; but, in the other, it cannot, though the Time of the Commission of it may.

It will be unnecessary for me to enter minutely into the nice Disquisition, How far, and for what Purposes, the Crime, appearing on an Attainder, may be controverted by Strangers, whose Interest is affected by it; because I am satisfied your Lordships will see, that the Distinctions on that Head are totally foreign to the present Question; and one single Observation would be sufficient to make that manifest; that is, that none of the Cases cited, or that can be cited, prove, that any Stranger can controvert the Attainder itself, whether founded on a Verdict, or Confession, or by Default; and it is the Attainder, and not the Crime, that is the only material Thing on the present Objection.

All that will be necessary, therefore, upon this Point, will be to shew, that the Confession, in this Case, binds the Crown; and that, if it does, there is no Attainder. The Inference will then follow of Course, that the Record may be read, to prove *Murray* not attainted, as the precise Point to be proved in Answer to the Objection to his Competency.

The Authority of the Attorney General to confess the Truth of the Plea of Surrender, has not been directly denied by the Counsel; but as they have seemingly, in Consequence, done it, and the clear Establishment of that Right, in this Case, will, by certain Inference, establish the Right to read this Record, I shall state a little to your Lordships how that Authority stands, upon the Nature and Reason of the Thing, and the known constant Practice.

The Law and Constitution has intrusted the Crown, as the executive Power, with the Prosecution of Crimes; and though oftentimes such Prosecutions are carried on by private Persons, even those are, for the most part, in the Name of the Crown.

But those, as well as Civil Suits, may be commenced sometimes without a just Foundation, and the Party sued may have a just Defence to the one as well as the other. Where that appears, it is equally just, in both Cases, to put a Stop to them; and as a Subject-Plaintiff may confess the Defendant's Plea, so may the Crown, by the Attorney General, its proper Officer, confess the Prisoner's Defence; and such Confession, in both Cases, is, and ought to

to be, both in Law and natural Justice, a Security against any future Action or Prosecution for the same Cause. Nor is there any Reason that can be given for the Power in the Case of a Subject, but what will hold equally strong, and stronger, in the Case of the Crown, as there could not be a greater Grievance to the Subjects in general, than to have it established as a Rule, that, when once a criminal Prosecution is commenced, the Defendant, how innocent soever, or how willing soever to make Satisfaction, must be put to the Vexation of a Tryal, or the Charge of a Pardon, which might, in many Cases, be his Ruin. And how strange would it appear to say, that the King might not do the same Justice to Innocence, that every honest Man would do! or that he might not, for such wise and gracious Reasons as would induce him to grant a Pardon after Sentence, stop the Proceedings in the ordinary Course of Law, before they come to Sentence!

To avoid these Absurdities, the Law intrusts the proper Officer, the Attorney General, with the Power of confessing a Defendant's Plea; where it appears to be true; in Charges of a lesser Nature, and, in the higher, by the immediate Warrant of the Crown; and such Confession has the Effect it ought to have of an absolute Discharge; and, I should imagine, no body, who thinks of it for a Moment, would, for the Sake of the Subject, wish it otherwise.

And, my Lords, this has been the constant Practice, not only in Criminal Prosecutions, properly so called, but in all Crown Causes even for Civil Rights: And whoever has had the Honour of serving the Crown in the Office of Attorney General must have eased the Subject on that Head, when, on Applications by the Parties sued, and Attendances by the Officers of that Branch of the Revenue which is in question, the Plea has appeared to be a just one, and both the Crown and the Subject find their Account in this Method of Proceeding, in the Expence and Delay that are saved by it; and such Confession, being recorded, has, to all Intents, the same Effect, as if, on Issue joined, a Jury had found the Fact to be what the Attorney General confessed.

The Practice is the same in criminal Cases, where the Attorney General confesses the Plea, whether it be to the Merits of the Charge, or only in order to let the Defendant into an Opportunity of trying those Merits.

There is one sort of Case frequently happens, very parallel to the present, where a Person is outlawed for Treason or Felony, which amounts in Law to an Attainder for the Crime, and equally affects the Party, both as to his Life and Estate, as on a Verdict. The Party having no way of coming at the Tryal, but by reversing the Outlawry by Writ of Error, which cannot be allowed without his Majesty's Consent, it is a frequent Practice to apply for that Indulgence; and it is very easily granted, provided there has been no great Delay. If the Party assigns an Error in Fact, as he may, the Attorney General confesses it, if true; and the Outlawry is reversed, and the Attainder avoided by it. And no one ever doubted, but the Record of that Reversal is conclusive Proof of his not being attainted.

Nay, the Crown has sometimes directed the Attorney General to confess Errors in Fact, as the Party's being beyond Sea at the time of the Outlawry, which have not been true; only that he may have an Opportunity of taking his Tryal, and not suffer for a Default in not appearing only. And no Lawyer ever said, that such a Confession was not as effectual to avoid the Outlawry, as the Verdict of a Jury impanelled to try it.

And if, in the present Case, the Truth was, That Mr. *Murray* did not actually surrender, but was apprehended before the Day; and that should be thought, in Strictness, not a Compliance with the Act; and the Attorney General was now prosecuting for the Crown only; I believe he would be under no Difficulty of owning the Truth; or apprehensive, that your Lordships would say, that the Confession was either illegal or unequitable; or that, when the End of the Act was answered, by Mr. *Murray's* being ready to take his Tryal, it was not agreeable to his Majesty's Royal Justice and Clemency, to remove the only Impediment to his having it. Nor can the Exercise of this Power be objected to from any Reasons but what would equally affect the Exercise of that great and excellent Prerogative of Pardoning.

What I have now said will fully shew, that the Cases cited are not applicable to the present: They are the Cases of innocent Purchasers, whose Estates were to be lost by the subsequent Attainder, and supposed Guilt, of the Vendors.

It would be unjust in itself, not to give them an Opportunity of defending their Property, by controverting the Fact on which it depended. The Law, in Conformity to natural Justice, gives them, in some Cases, Liberty of disputing the Crime itself, where the Conviction is by Confession; and the Time of the Commission, where it is by Verdict: But, in those Cases, the Question was a Matter of Property between the Crown and an innocent Subject, and depended on the Crime's being committed before or after the Purchase, and not merely on the Attainder, which would stand good, let that Question be determined either Way; but, in the present Case, the Question is on the Incompetency of a Witness, which

depends solely on his Attainder, and not on the Reality, or Time, of his Crime. Therefore, to make a parallel Case, it must be said, that if the Attorney General had confessed a Plea of Not guilty to an Indictment of Treason, and the Prisoner, being thereupon acquitted, should be brought as a Witness either in a Criminal or Civil Suit, his Competency might be objected to, and the Objection supported by Proof of his actual Guilt: But this cannot be pretended; the contrary is so clear, that if he had never been indicted or acquitted, the clearest Proof of his Crime could not be admitted for this Purpose; and no Evidence can, in any Case, establish such an Objection, but a Record of an Attainder.

The only Colour of Distinction between the Case put, and the present, is, that the Attainder here appears *prima facie*, and must be avoided by a Surrender to be proved. This is true; and therefore puts the Proof on us, to remove the Objection; and it is for that Reason this Record is offered, as the proper Proof: And, as in the Case where the Proof lies on the Side of the Objection, the Record of the Attainder is the proper Evidence, so in this, where it lies on the Side of the Witness, the Record of his Surrender is the direct Proof, that he is not attainted.

My Lords, I come now to the Second Reason given for the Objection, That the Prisoner is no Party to this Record; and I shall have Occasion to say very little upon this, because it is in Effect answered by the first Reason insisted on by the Counsel themselves; which supposes, if the Surrender had been found by Verdict, the Record would be proper Evidence; and yet the Prisoner would then have been equally no Party. This, therefore, destroys the Rule and Supposition on which this Reason is founded, which is, that no Record can be read against a Man, to which he was no Party; and, indeed, there is not, nor can be, any such Rule; it is most notoriously otherwise in the very Instance in question, of the Incompetency of a Witness, on account of his Attainder, which never can be proved by any thing but the Record; and yet the Party to be prejudiced by it neither is, nor can be, a Party to it.

The noble Lord is controverting no Property on the Foundation of Mr. Murray's supposed Attainder; he neither claims or defends any Right that is demanded on the Foundation of his Discharge; the Record has no more relation to him than to all the World; and if the Witness is disabled as to him, he is so with respect to all Mankind, and in all Causes Civil or Criminal, and must be put on the Tryal of his Surrender, as often as he shall be called upon during his Life, to give his Testimony in any Court, and in any Suit. What Absurdities this would be attended with, I need not mention; your Lordships will be beforehand with me, in suggesting them to your own Thoughts.

Sir John Strange.

My Lords,

THE Question arising upon the Objection made by the noble Lord at the Bar, is, not what the Consequence of this Record will be, when it is read, but singly, Whether we shall be now admitted to read it, or no? My Lords, the Objection made by the noble Lord at the Bar against this Witness, was founded upon this Record. My Lords, it was called for, and read; which was the Act of Parliament made in the last Sessions, for the Attainder of several Persons; and, my Lords, upon that sort of Attainder no Writ of Error could lie; and therefore, my Lords, there was no other Way to take off the Force of that Attainder, that was warrantable, than the Method taken in the present Case. And, my Lords, I must submit it to your Lordships, whether we are not intitled to read what we now call for, not as a distinct Record, but as Part of the whole Record relating to the Person now at your Lordships Bar; for the Record must come before your Lordships, in all its Parts: Nobody can call for a particular Part of a Record to be read, but the Whole must be laid before your Lordships; and therefore, my Lords, I beg Leave to contend, that this is Part of the Record of the Proceedings against the Person whom we now call upon as a Witness, which the noble Lord at the Bar himself called for. My Lords, what the Consequence of it will be afterwards, is a Question of another Nature; but I must submit it to your Lordships, that as Part of the Record of the Proceedings against Mr. Murray, we are certainly intitled to have it read.

My Lords, One Objection taken by the Gentlemen on the other Side, is, That it is not the Record of the proper Jurisdiction, but that it ought to be a Record made by the Person to whom Mr. Murray surrendered himself: But, my Lords, I must beg Leave to submit it to your Lordships, by way of Answer, That it is the Record of a proper Jurisdiction, in a Case of this Nature. My Lords, the Court of King's Bench, as a Court of criminal Jurisdiction, may have Offenders of all Sorts brought before them. My Lords, in the present Case, a *Certiorari* issues out of Chancery, and by *Mittimus* the Record is removed into the King's Bench: And I will call upon the Counsel for the impeached Lord, if they will venture to say, that a *Certiorari* will not lie for that Purpose. My Lords, if it will lie, it must be

be for some End or Purpose that a *Certiorari* was brought, and the Record transmitted thither; that was the proper Jurisdiction, and that Court then had a Right to call upon the Party brought up before them by *Habeas Corpus*, to know what he had to say, why Execution should not be awarded, upon the Footing of the Attainder, by this Act of Parliament. My Lords, the Question was put by that Court to the Person who was then a Prisoner before them: He pleaded a Surrender within the Time; and insisted, that there he was amenable to Justice: He alleges that as a proper Answer to that Court, upon the Question asked him; and whether it was, or was not a proper Answer, depended upon the Fact. The Court could have no Doubt, but if the Party surrendered himself in Time, and was amenable to Justice, but that was an Answer to their demanding to know of him, why Execution should not be awarded against him: And, my Lords, if that Fact had not been verified in a legal Way, there must have been Execution awarded; but if legal Satisfaction was given by the then Prisoner, it was the Duty of that Court to record that as a Matter of Fact, which was properly verified before them. And, my Lords, there are two Ways of verifying Matters of Fact; one is by the actual Proof of the Fact (if the other Party denies it), or by Confession; and if the Party knows, that he cannot in Conscience deny it, then he ought to confess it, and not put the other to the Expence and Trouble of proving that which he knows to be true: If you know that to be Fact, that the Party surrendered himself to Justice, and was forthcoming, will any body say, that it is not right and just, to admit that Fact as alleged? Therefore, my Lords, the Question of Fact in this Case has been properly determined by that Court; the Consequence of which is, that That Court ought to make a Record of it; and that is to be considered, not as a distinct separate Record of itself, but as the Proceeding upon this Record of this Act of Parliament, which had thus been removed there by *Certiorari*; and it is, to all Intents and Purposes of Law, to be considered as a Record of the Proceedings; and they are to be considered as having the former Proceedings before them, upon the same Record; and all Courts are bound to admit that Record, which was thus made in a Court of legal Proceeding: And therefore, my Lords, if that Court was the proper Jurisdiction, can any body say, that the Record of what was there transacted, is not as proper Evidence as what the noble Lord at the Bar has called for, and which has been read to your Lordships, which is the Act of Attainder of the last Sessions of Parliament? My Lords, the Gentlemen on the other Side say, that this is an erroneous Method: Say they, you have not gone to the proper Person; here is a particular Jurisdiction to record a Surrender, and you should have gone to the Justice of Peace to whom the Surrender was made. My Lords, I have looked upon the Act of Parliament, to see what the Legislature had thought proper to prescribe, as the Duty of the Justice of Peace to whom the Surrender is directed to be made.

My Lords, all that is required of him by this Act of Parliament, is: He is, upon the Surrender, to commit the Person so surrendering to Prison, for the High Treason, there to remain till he is discharged by due Course of Law; and he is immediately to give Notice of it to the Secretary of State. Your Lordships will then be pleased to consider, what it is that the Gentlemen insist upon: My Lords, will any body say, that what is mentioned in this Act of Parliament, in regard to the Justice of Peace, will take away the Jurisdiction from a Supreme Court of Original Jurisdiction, in Cases of that Kind; and that without a Word being mentioned in the Act concerning it?

My Lords, they say, That the Jurisdiction of recording the Surrender is given to the Justice of Peace, tho' the Act of Parliament does not say a Word of his doing any thing of this Nature: And, my Lords, if the Act of Parliament had made him the proper Person, whose Duty it was to record the Surrender, to what Purpose is he to send an Account of it to the Secretary of State? Was he to make up the Record? No; all the Justice of Peace was to do, was to give Notice of the Transaction before him, to those Persons who are appointed to do what shall be done upon such a Surrender. My Lords, there is something that was said by the Counsel for the noble Lord at the Bar, which I will only just take Notice of: They were pleased to put this Case: Say they, Suppose this Record is now to stand, it is a Matter transacted, to which the noble Lord at the Bar is no Party; and consequently ought not to be read against him. My Lords, I will venture to say, there is no such general Rule; nobody will contend (because there are numberless Instances of it), that Records are not constantly permitted to be read as Evidence against Persons who are no Parties to them. My Lords, Suppose a Man is charged with having harboured a Person attainted of Treason or Felony; and, when he comes to be tried, say they, Gentlemen, you shall not read the Record of that Person's Attainder, because the Man now charged is no Party to it: Do not charge me with receiving or harbouring a Man attainted by that Record; for tho' the Record may be read as against him, yet it cannot be read against the Person charged, who was no Party to it. My Lords, Would any Court of Justice make the least Difficulty in admitting such a Record to be read? My Lords, the Reason of the thing itself speaks it; for till the
Record

Record is read, it does not appear there is any Person attainted; and consequently no Charge against the Prisoner. And, my Lords, to make it a Civil Case, suppose a Lord of a Manor claims by Escheat the Estate of a Person attainted, and another Lord claims the same Estate, cannot the Record of the Person's Attainder be read as Evidence in that Case, tho' neither of them are Parties to it? My Lords, there can be no Doubt but it may; and therefore, my Lords, that Objection has no Force upon the present Question. My Lords, the Objection now made is to the reading of a Record, or Part of a Record, which the noble Lord at the Bar himself called for; and I must submit it to your Lordships, that we are intitled to have it now read: What the Consequence of reading of it will be, is not now to be considered; for we argue singly upon the Question, Whether it shall be now read, or no?

Mr. Solicitor General.

My Lords,

WHether the Record which has been opened, may be read at all; and what shall be the Effect of it, after it is read (I mean, whether it may be falsified); are Two separate and distinct Considerations.

Your Lordships were pleased to ask the noble Lord at the Bar, and his Counsel, Whether they would rest their Objection to the reading of it? or suffer it to be read, and then object to the Consequence of it?

They chose to object to the Reading; and the Counsel were allowed to speak to that Point only: And yet there is not an Authority they have quoted, which don't prove, that, at least, it must be read.

The Competency of all Evidence, in a great measure, depends upon the Nature of the Question to which it is applied; for that is Evidence in one Case, and to one Purpose, which is not so in another kind of Case, or to another sort of Purpose.

The Merits of this Objection therefore, will depend upon thoroughly understanding the Purpose for which this Record is produced.

The Incapacity of a Person attainted to give Testimony, does not arise from his Life being thereby in the Power of the King; or any Presumption, that, thro' the Fear of Death, he may be induced to exceed the Bounds of Truth; but it is one of those many Incapacities which are the Consequences of his Attainder.

He is cut off from the Community; his Blood is corrupted; he loses his Credit; and therefore can be a Witness in no Case, neither for or against a Prosecution, nor in any Civil Suit between Subject and Subject.

All Proceedings upon which a Man can be attainted, at the Common Law, are between the King and the Party only: But such Proceedings are Evidence, and the only Evidence to prove the Attainder between all Persons, and upon all Occasions; which shews the Mistake the Gentlemen proceed upon, when they object, that my Lord *Lowat* was no Party to this Record; and therefore it shall not be read against him.

The Party who objects to a Witness, because he is attainted, undertakes to shew, that, according to the Course of the publick Law and Justice of the Nation, he is so; and therefore may read any Proceedings in the Course of that publick Law, to prove it.

So likewise, in Answer to the Objection, and to shew the Person not attainted, any of the like Proceedings may be read.

If a Conviction and Judgment is read, it may be answered by reading the Reversal of that Judgment upon a Writ of Error; and yet the King must be the only Party to both these Proceedings.

The likest Case to the present, at Common Law, is that of an Outlawry.

If an Outlawry is produced, to prove a Man attainted, the Reversal of that Outlawry may be given in Evidence, as a full Answer to that Proof: And yet most of those Reversals, in High Treason, are grounded upon the Attorney General's confessing an Error in Fact, by the King's Command; and this generally is a merciful Confession, contrary to the Truth of the Case. Several noble Families now enjoy their Honours, and their Estates, by virtue of such Reversals.

I will not mention Instances; as your Lordships have the Assistance of the Judges, I am persuaded they will inform your Lordships, that there are many. Would an Objection be endured to the reading such a Reversal?

The present Case is that of a Parliamentary Outlawry, if I may so call it: Persons fled from Justice are attainted in a more expeditious and summary Way than could be done by the Course of the Common Law, unless they come in, and take their Tryals within a limited Time.

The only Court in this Part of the Kingdom, which can award Execution against a Person, as attainted within this Act, is the Court of King's Bench: There can be no Party to such

Proceedings but the King, who is intrusted with the whole Execution of the Publick Law of the Nation. A Proceeding therefore, in that Court, which shews a Man never to have been attainted within the Act, is Evidence to answer an Objection, which says, he is. It proves conclusively, that, in the Eye and Consideration of the Publick Law, he is not an attainted Man; he may inherit, he may purchase; he can't be put to Death. By this Proceeding the King is bound for ever; all Magistrates are bound; no Judicature can now consider the Witness in any other Light than he ought to be considered in, if the Act had never been made. Is it possible then to doubt, whether (in Answer to an Objection, that by the Law of the Land this Witness is now looked upon as an attainted Man) a Record should be read, which proves, that by the Law of the Land he is not looked upon as an attainted Man. He is either a Person liable to all the Consequences of an Attainder, or none.

Mr. Noel.

My Lords,

I Shall be very short in offering my Sentiments to your Lordships upon the present Question, because Three learned and able Gentlemen have already spoken very fully to it.

My Lords, the Question arises upon an Objection taken by the noble Lord at the Bar, against the Competency of Mr. *Murray's* Testimony, as he stands attainted by the Act of the last Sessions of Parliament, which has been read to your Lordships: But, after that, another Objection arose, in consequence of what we, on the Part of the Prosecution, offered, which was a Record we proposed to be read: To the Reading of which the noble Lord objected, and has relied upon that Objection, that it cannot be read at all.

My Lords, I was surpris'd at that Objection; and the Counsel for the noble Lord have been so sensible, that there was no great Weight in it, that they have prematurely, in the Course of their Arguments, run into a Debate concerning the Force and Effect of it when read, and not to the actual Reading of it; and, my Lords, it was a very strange Proposition to be insisted on before your Lordships, that, in a Question relating to Mr. *Murray*, and him alone, when an Objection is made to his Testimony, that he stands attainted by an Act of Parliament, that your Lordships should shut your Eyes, and not receive Evidence of the Proceedings of a Court, having proper Jurisdiction to determine any Question, which might arise upon that Act of Parliament: I say, my Lords, that would be a most extraordinary Thing indeed, when the Objection relates to Mr. *Murray*, upon the Attainder by Act of Parliament; and yet, they say, your Lordships shall not see the Record of the Proceedings of a Court of Justice, founded upon that Act of Parliament. But, my Lords, as the Gentlemen have, under a Notion of considering this Objection in some Degree, considered the Force of the Record itself, if it had been read, though they have done it improperly, yet I doubt it will be expected, that we should take notice of the Foundation of that Argument.

The Question, therefore, seems to be, Whether Mr. *Murray* is to be considered under the Act, and the Proceedings in the Court of King's Bench upon it, as an attainted Person, or not.

My Lords, the Act of Parliament does not finally conclude any Person: It names several Persons, whom the Act declares shall be attainted by the Force of that Law, unless they comply with the Terms expressed in it; and the proper Court of Law must judge, when the Person comes before them, whether he was a Person within the Meaning of the Act of Parliament, or not. Therefore, my Lords, when he was before a Court, who had proper Jurisdiction upon that Question, Whether he was an attainted Person, or not, and they have determined that Question, That he was not, then there is an End of that Question. But it has been said, That this may affect, in Consequence, the Property of a Third Person; and that the noble Lord at the Bar ought not to be affected by the Proceedings in the King's Bench. But, I apprehend, this Question relates personally to Mr. *Murray*, and to no other. It is merely a Question as to his Capacity or Incapacity; that is, whether he be attainted, or no; and therefore, my Lords, that distinguishes this Case from the Cases of private Property, alluded to by the Counsel for the noble Lord in the Course of their Argument.

My Lords, I beg Leave to state this Matter in a stronger Light: If your Lordships shall say, that Mr. *Murray* is an attainted Person, you must likewise say, that he is liable to have Execution awarded against him upon this Act; for, when that is the Question, it must be considered intire, with all its Consequences.

My Lords, if no Execution can be awarded against him, your Lordships cannot say, that he is an attainted Person: Therefore your Lordships see what Difficulties will ensue, if you should determine, that he stands attainted, with respect to the noble Lord at the Bar, but not to the Consequences that the Law draws from his being an attainted Person. My Lords, it would be the strangest Case in the World, if that should be your Lordships Sentiments, that he is not attainted in one respect, and yet that he is attainted in another respect.

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My Lords, the Counsel for the noble Lord object, That the Proceeding which has been had, has been by the Confession of the Attorney General, though they admit it was in the Power of the Crown to make such Confession. I must submit it to your Lordships, that though it is by the Confession of the Attorney General, as it is by proper Authority, and in a legal Court, having proper Jurisdiction, that it is as effectual and binding upon the Crown, as any Act they can possibly do: And can your Lordships say, that Mr. *Murray* shall not have the Benefit of a legal Proceeding of a Court of Justice, having compleat and lawful Jurisdiction, and who have determined the Case?

My Lords, it is said, That there is some Difference where it is upon the Confession of the Attorney General, and where it is founded upon a Verdict. My Lords, your Lordships will consider what are the Circumstances of the Case in regard to that Matter: A Gentleman is brought before a Court of Justice; to answer why Execution should not be awarded against him upon a supposed Attainder. He pleads a Fact, that is sufficient, if true, to exempt him from that Attainder: Can the Gentleman say, that he must not avail himself of it, because the Attorney General will not put him to the Expence to prove it? My Lords, is it said, that, if he had denied the Plea, the Consequence to Mr. *Murray* must have been, that he would not have appeared to have been a Person exempted from the Act? No: But, say they, because the Attorney General and the Crown are satisfied of the Truth of the Plea, and will not put him upon proving it, therefore he is not to have the Benefit of the Judgment of the Court upon that Question. I must submit it to your Lordships, that every Man, under those Circumstances, would be in a most fatal Situation, and that it would be attended with very bad Consequences. A Man is asked, what he has to say why Execution should not be awarded against him; and pleads a Fact that actually will clear him from the Attainder: The Attorney General confesses the Plea, does not join Issue, and will not give him an Opportunity of proving it; and, my Lords, what is to be the Consequence? Why, according to this Doctrine, he must inevitably be condemned as a Person attainted; whereas, if he had been put to the Proof of it, it might have been determined, that he was not attainted. I apprehend your Lordships will not suffer them to draw that Inference, that, because the Attorney General has not put him to the Proof of his Plea, he is to be considered as a Person attainted, contrary to the Judgment of the Court.

Sir Richard Lloyd.

My Lords,

THE Question has been so fully spoken to already, that I shall not have Occasion to take up much of your Lordships Time: But I cannot forbear expressing my Surprize at the Objection now made; *viz.* "That this Record cannot be read against the noble Lord at the Bar:" The Reason given for which is, That he is no Party to it. Many Answers have been given; and I will not repeat them: But shall offer a Consideration or Two to your Lordships, in order to shew, that the Force and Effect of Mr. *Murray's* Attainder has been, by this Transaction on Record, totally taken off.

My Lords, the whole Argument on the Prisoner's Side is in this Compass; *viz.* they say, That Mr. *Murray* (the Person produced by us as a Witness) is still attainted; and therefore, by the Rules of Law, cannot be a Witness: And 'tis certainly true, that, if he stands now attainted, he cannot, by our Law, be admitted to give Testimony. Let us come then to that Question, Does he, or does he not, at this Hour, stand attainted by virtue of the late Statute?

It cannot be doubted, but that a Parliamentary Attainder of this Sort may be dissolved by some Method or other; and the very Statute directs one Way; *viz.* by Surrender before a particular Day; and the only Way to ascertain that Fact is a Judgment on Record, that he did surrender.

I would ask the Counsel for the noble Prisoner, whether Mr. *Murray* can, by Law, be called to Judgment for that High Treason, for which he was, by the late Act, attainted. They must own, that this Record of Surrender would be an absolute Defence on such an Occasion; nay, it would be an absolute Bar to such a Demand of Judgment. If this Defence would not be his Security, the Consequence is, that there would be no Method at all in getting rid of such an Attainder.

It has been objected, That though this may be a good Discharge betwixt the Crown and Mr. *Murray*, yet it ought not to affect others, who are not Parties to that Proceeding. My Lords, 'tis true, others may be affected by Mr. *Murray's* being restored to his Credit: But that is no Objection; for though, by virtue of this Record, he is so restored, yet that is only a Consequence, which necessarily follows from the Facts ascertained by that Record.—The Proceeding on the Record was a legal Transaction between the Crown and Mr. *Murray*, and no other Person whatsoever had a Right to be a Party to it.—The King, at the Time of
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Mr. *Murray*'s pleading on the Record, was the only Person to call him to account for his Guilt: The only Controversy at that time was betwixt the Crown and the Party called down to Judgment: The Matter therefore being a legal Transaction, a Law Controversy betwixt the only proper Parties, its necessary Consequences must follow, let who may be affected.

But 'tis said, "That if it had been found by Verdict, that Mr. *Murray* had surrendered in due Time, then the Record might have been read in Evidence against all Persons; but that, as 'tis founded on Mr. Attorney General's Confession of the Surrender, it ought not."—This is a strange Distinction. I would ask the Gentlemen who make it, Whether this Record by Confession is not a full and compleat Record? Has not his Majesty's Attorney a Right to confess it? No Lawyer will say, that he has not such a Right by the Laws of our Land.

My Lords, let me argue this Matter not on the Principles of Law only, but on those of Reason, abstracted from the Law; and thence see, whether Mr. *Murray* is not as much discharged from his Attainder, or his Attainder as much avoided, by this Confession of the King by his Attorney, as he would be by Verdict.

Is the King the only Person in the Kingdom, who shall be compelled to say a Thing is not true, which he knows to be true? Or, is his Majesty the only Person, who shall be hindered from owning that to be true upon Record, which he and all the World knows is true?

'Tis a Point of legal Controversy betwixt the Crown and one of his Subjects; and supposing it to have been a Fact notorious, that Mr. *Murray* (the Defendant in that Controversy) had come in and surrendered in due Time, according to the late Act, would it not be absurd to say, that the Crown's Attorney should be found by Law to say, that he did not surrender? *i. e.* shall be found to deny and put to Tryal a Fact, which, he knows, is indisputably true, and needs no Tryal: Yet this, my Lords, must be the Doctrine to be maintained by the Counsel for the noble Prisoner; or else they must agree, that this Record of the Fact of Surrender, by Confession of the Attorney General, is of equal Weight with any other Record whatsoever.

My Lords, his Majesty has a Right to the Life of every Person attainted; and would it not be a cruel Law, that should prevent him from admitting any Facts to be true, which such Person insists on for the saving his Life, when the same, within his own Knowledge, strictly are so?

There is no Doubt but that a Transaction of this Kind betwixt Subject and Subject is good, where each Party to a Controversy (Plaintiffs and Defendants) admit such Facts on the Record, which they know the Certainty of, and never, unless out of a Spirit of Perverseness, put them in Issue.—Where is the Difference? since the Crown and Mr. *Murray* are, as to that Matter then in Controversy, the only Persons who could be Parties.—The Capacity to be a Witness is only a Consequence naturally flowing from the Avoidance of the Attainder. Mr. *Murray* is not restored to his Credit by Act of Favour, but a necessary Consequence of Law, and such as the Crown could not prevent; for, as the Attainder was the only Cause of his Loss of Capacity to be a Witness, when the Force of that is taken off, that Capacity is, of course, restored, not out of Favour, but of strict Right, and by necessary Consequence.

My Lords, I would ask one Question; *viz.* Whether the Counsel for the noble Lord at the Bar will say, that Mr. *Murray* has this present Day any Attainder against him? Or whether he can ever be called again to answer on the Foot of that Parliamentary Attainder, in which he was included?

If he cannot, as most certainly he cannot, then there is nothing now existing, which takes away his Testimony; and, as the present Record is of a Controversy betwixt the only proper Parties to it, and is produced only to manifest a Fact then depending, and then by the Rules of Law ascertained, it ought to be read.

Lord High Steward. Gentlemen of the House of Commons, I suppose you have no Objection to the Counsels replying.

Sir John Strange. No, my Lords; provided we have the last Word; which is our Right.

Mr. Forrester..

My Lords,

I shall take up the less of your Lordships Time at present, because I admit most of the Propositions laid down by the learned Managers; though, I conceive, that none of them have answered the Objection we made to the Reading of this Record, which was the Possibility of Damage that might ensue to the noble Lord at the Bar. My Lords, the Reason is plain why we object to it, because the Credit of the Fact depending merely upon the Confession of the Attorney

Attorney General, if it be received in the present Case, it must be so in every other, whether the Questions relate to Property, or any other Matter; and, if it be conclusive to the noble Lord at the Bar, it is equally so to every Man in this Land. My Lords, I admit every Case put by the learned Manager who spoke first, as relative to Criminal Proceedings; but what we insist upon is, That this Confession of the Attorney General does only bind the Crown, and the Parties to it; but binds no other Person: And, my Lords, they have cited no Authority to your Lordships to prove it binding upon any body else. My Lords, it was said by the learned Manager, That, if Mr. *Murray* was brought a Second time into any Court of Justice, he would have the whole Benefit of this Record, and thereby, my Lords, prove himself not attainted by this Act of Parliament: And there is no doubt of it, because the Confession is the Act of the Crown, who is bound by it.

They likewise say, That any Person, claiming under Mr. *Murray*, might intitle himself under this Record. My Lords, I admit that also, because such Person would have the same Right as Mr. *Murray* himself; but, my Lords, that does not prove, that it can affect any other Person.

My Lords, it is admitted, that a Pardon would have taken off all Objection: But I humbly insist, That, by this Method, the Gentleman still continues liable to be considered as an attainted Person in another Part of the Kingdom, I mean in *Scotland*, where this Record would be no Evidence; for, should he escape from his present Confinement to *Scotland*, and be brought into the Court of Justiciary, to shew Cause why Execution should not be awarded against him, as attainted by this Act of Parliament, his Plea in the King's Bench, confessed by the Attorney General, would be of no Avail to him: He must make out the Fact insisted on by other Proof, which, being Matter of Evidence, might as well come out one Way as the other, that he did not, as that he did, surrender before the 12th of *July* last; that he was taken by the King's Forces, as that he did surrender himself, as the Act requires. Thus your Lordships see, in how high a Degree the Question affects the noble Lord at the Bar; and your Lordships will be very tender how this Gentleman's Testimony is admitted in a Case of this Nature, until both his Competency and Credit be established by better Authority than the bare Confession of the Attorney General.

My Lords, I mentioned several Instances, where a Record of this Kind would not be Evidence against a Third Person: But, say the Gentlemen, that is not the Case here; because my Lord *Lovat* is not affected by *Murray's* Attainder. The King, who had the sole Right of prosecuting, and had an Interest in the Attainder, has declared him not to come within the Act of Parliament. But I must submit to your Lordships, that my Lord *Lovat* is affected by, and concerned in, the Consequence of the Attainder: He has a Right to set aside the Testimony of Mr. *Murray*, if attainted; and that Right of setting aside his Testimony is equally strong as a Right to an Estate, or any other Right given by Law; and the same Methods must be used to deprive him of the one, as the other. My Lords, it is said, That this Method of Confession is the proper Course; that it is daily made use of in that; and the Attorney General, upon a Writ of Error brought, and Errors assigned in Fact, or in Law, may admit them to be so. But, my Lords, in none of the Cases quoted by the Gentlemen is there any, wherein the Attorney General has, by his Confession, made that Error, which is not so: And although the Party should assign Errors, and the Attorney General admit them, yet would not that bind the Court to pronounce them to be Errors, if they appear otherwise. My Lords, as so much Time has been taken up already, I will not repeat any of the former Arguments; but shall conclude with an Observation delivered down to us, by one of the greatest and most upright Judges that ever sat in this Hall; I mean my Lord Chief Justice *Vaughan*, who tells us, That the artificial Reasoning of Law ought never to take place against the Principles of natural Justice and Equity: And, my Lords, it is a Principle of natural Justice, that a Third Person should not be prejudiced by the Acts of others. The same learned Judge concludes his Paragraph, by adding, That, in Cases which depend upon fundamental Principles, from whence plain and natural Conclusions may be drawn, Millions of Precedents are to no Purpose: But, my Lords, there has not been one single Precedent laid before your Lordships, where the Right of a Third Person may be affected in the Manner now contended for; and, as nothing of that Kind has been attempted, I beg Leave to insist, That the Right of the noble Lord at the Bar to set aside this Witness, is as much a Right, as that he has to any Part of his own Estate; and submit therefore to your Lordships, whether they ought not to substantiate this Testimony by some better Proof than so weak a Thing as a Record, founded only on the Suggestion of the Party, confessed by the Attorney General.

Lord High Steward. Gentlemen of the House of Commons, The Counsel for my Lord *Lovat* have done with what they had to offer by way of Reply: Would you say any thing to it?

Mr.

Mr. Attorney General.

My Lords,

IT is said by the Counsel for the noble Lord at the Bar, That they do not deny any Proposition laid down by us; but that they deny the Consequence of those Propositions. My Lords, A Denial of the Premises would be a Denial of the Consequences; but an Admission of the Premises here is an Admission of the Consequences: They now say, all they desire to contend for, is, That the Confession in this Case does not bind a Third Person; and that they shall not by that lose their Right to this Objection. My Lords, What is that Objection founded upon? It is founded upon this Supposition, That the Witness called is an attainted Person. If he is not attainted, their Objection fails; for they cannot say, that this is an improper Person to produce as a Witness, upon any other Ground. If the Record therefore destroys the Pretence of an Attainder, it proves his Competency. Now the Counsel for the Prisoner have not been able to point out, or suggest, any one Instance or Respect, in which he can be said to be, or affected, as an attainted Person, unless for the present single Purpose. And it would be very extraordinary to say, that a Person who can lose neither his Life nor Estate, nor the Purity of his Blood, as a Person attainted of Treason, should be deemed attainted, for no other Purpose but to render him infamous. My Lords, What is the Offence by this Act? It is not High Treason; the Offence is in not submitting to Justice; and the Record shews, that he did submit himself to Justice. This is stronger, as to that Point, than a Pardon, because it avoids the original Guilt. The Gentlemen say, That this Record cannot be made use of in *Scotland*; and that if the Witness was brought before a Court of Justice there, for Execution, upon the Foundation of this Act, he could never avail himself of this Record. My Lords, I deny that; and I take it to be clearly otherwise; for what would be the Consequence, if he could not? Much more than the Gentlemen are aware of: For by the same Rule that this Record could not avail him there, no Verdict, no Acquittal, in *England*, could protect a Man from another Prosecution in *Scotland*, for the same Offence; and the Prisoners who have already had, or hereafter shall receive their Tryal, either in *England* or *Scotland*, for the late Rebellion, and been acquitted; may, by being sent into the other Part of the Kingdom, be tried a Second time, and be put Twice in Hazard of their Lives. As this is contrary to the Laws of *England*, I believe it is equally so to the Laws of *Scotland*, as they stood originally; for I take it to be contrary to the First Principles of all Laws, that after a Man is fairly tried for an Offence, by a Court that has full Cognizance of the Crime, he should be taken up, and tried again for the same Offence. No Law will admit of it. But, with respect to Treason, it is made clear by the Statute of 7 *Ann.* which makes the Law of Treason, and the Manner of trying it in *Scotland*, the same as in *England*. My Lords, if the Gentlemen ask, How this Record may be made use of there? the Method is by producing the Record, or proving a true Copy of it, as is done in case of the Record of a Judgment of any other Court: And the Judges in *Scotland* will be bound by this Record. My Lords, the absurd Consequences arising from the contrary Doctrine appear at first Sight, and are too many now to enumerate. The Gentlemen say, That a Confession of an Error in Law will not be admitted in any Court: I do agree that it will not, because the Court must judge upon the Whole of the Record, and determine upon their own Judgment and Knowledge of the Law, whether (supposing all the Facts to be true) there is Error, or not. The Reason is, because that is their proper Province; and they neither want, nor can be bound by, the Confession of the Attorney General. But it is quite otherwise as to Matters of Fact, which the Court do not *ex officio* examine into themselves; they must take them to be either as they are stated and admitted between the Parties themselves, or appear by the Verdict of a Jury. To apply this to the present Case: Mr. *Murray* says, That he did surrender, and submit himself to Justice, according to the Act of Parliament. The Attorney General, by Command of his Majesty, admits that Fact: As there is no Issue joined, a Jury can't be summoned to try it; and it is impossible the Court should try it themselves, by examining Witnesses; they have no Commission for it; and the Law gives them no such Power. The Fact therefore must be taken to be true; and, as it cannot be now controverted, your Lordships must judge, whether it don't clear him of any Attainders.

Sir John Strange.

My Lords,

I Should not now have stood up, to have taken up any more of your Lordships time, but in regard to what was mentioned by the Gentlemen who are Counsel for the Prisoner, that this Record cannot be made use of in *Scotland*. My Lords, I will beg Leave to put them in mind of the Statute made in the Seventh Year of Queen *Anne*; which says, That Tryals for

High Treason in that Kingdom are to be the same as if they were here; and whatever Benefit a Person will be intitled to here, they would be equally intitled to there: And therefore I would not have it now taken for granted, that in such Cases That should not be admitted as Evidence in one Part of the Kingdom, which is Evidence in another Part of it.

Lord Talbot. My Lords, If the Record is now to be read, only to shew, That Mr. *Murray* surrendered himself within the Time prescribed by the Act, I should have no Objection to the Reading of it; but if it is to prove Mr. *Murray* to be a competent, or an incompetent Evidence, then I think it of that Consequence, that I hope some Lord will move to adjourn to the Chamber of Parliament.

Lord High Steward. My Lords, If any Debate arises upon the Point that has been argued at the Bar, your Lordships must adjourn to the Chamber of Parliament, to debate and consider it.

Then the Earl *Stanhope* moved the House, to adjourn to the Chamber of Parliament: And the House was adjourned accordingly: And, after about Two Hours, returned in the same Order as before. The House was resumed; and Proclamation made for Silence.

Lord High Steward. The Lords adjourned to the Chamber of Parliament, upon the Question which had been argued before them, Whether the Record of the Court of King's Bench, offered in Evidence by the Managers, ought to be read, or not? And their Lordships have come to the following Resolution; with which I am ordered to acquaint the Managers for the House of Commons, and you, my Lord *Lovat*: And it is this; That the Managers for the Commons be admitted to prove, and give in Evidence, the Record of the Proceedings in the Court of King's Bench, upon the *Certiorari*; whereby the Act of the last Session of Parliament, for attainting *John Murray of Broughton*, and others, unless they surrendered themselves by a certain Day therein mentioned, was removed before that Court.

Mr. Attorney General. My Lords, We desire Mr. *Tully* may be called, to prove the Record.

Lord Lovat. My Lords, I told your Lordships before, that I would give you very little Trouble; and now I am willing to give you still less. I acknowledge the Record; and shall not give your Lordships the Trouble of hearing it proved.

Lord High Steward. That will save the Trouble of proving it; but it must be read. Does your Lordship admit the Record to be read, without further Proof?

Lord Lovat. Yes, if your Lordships please.

Then the Record was read by the Clerk, at the Table; and is as follows:

Pleas before our Lord the King, at Westminster, of Hilary Term, in the Twentieth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith amongst the Pleas of the King. Roll.

England. } OUR present Sovereign Lord the King hath transmitted to his beloved and faithful Sir *William Lee*, Knight, and his Associates, Justices of our said present Sovereign Lord the King, assigned to hold Pleas before the King himself, his Writ of *Mittimus*; together with a Writ, directed to the Clerk of his Parliaments, and the Return made to the same; and also the Record of a certain Act of Parliament of our said present Sovereign Lord the King, made at *Westminster*, closed in these Words:

The Writ of } TO Our beloved and faithful Sir *William Lee*, Knight, and others, his Associates, Our Justices assigned to hold Pleas before Us, Greeting. We send you inclosed, in these Presents, the Tenour of a certain Writ of *Certiorari*, directed to our beloved *Asbley Cowper*, Esquire, Clerk of our Parliaments; together with the Return, indorsed upon the Back of the said Writ; and also the Tenour of a certain Act, whereof Mention is made in the same Writ, intituled, An Act to attaint *Alexander Earl of Kellie*; *William Viscount of Stratballan*; *Alexander Lord Pitligo*; *David Wemyss*, Esquire, commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James Earl of Wemyss*; *James Drummond*, Esquire,

Esquire, eldest Son and Heir Apparent of *William Viscount of Strathballan*; *Simon Fraser*, Esquire, eldest Son and Heir Apparent of *Simon Lord Lovat*; *George Murray*, Esquire, commonly called *Lord George Murray*, Brother to *James Duke of Athol*; *Lewis Gordon*, Esquire, commonly called *Lord Lewis Gordon*, Brother to *Cosmo George Duke of Gordon*; *James Drummond*, taking upon himself the Title of Duke of *Perth*; *James Graham*, late of *Dunroon*, taking on himself the Title of Viscount of *Dundee*; *John Nairn*, taking upon himself the Title or Stile of *Lord Nairn*; *David Ogilvie*, taking upon himself the Title of *Lord Ogilvie*; *John Drummond*, taking upon himself the Stile or Title of *Lord John Drummond*, Brother to *James Drummond*, taking on himself the Title of Duke of *Perth*; *Robert Mercer*, Esquire, otherwise *Nairn of Aldie*; *Sir William Gordon of Park*; *John Murray of Broughton*, Esquire; *John Gordon the elder*, of *Glenbucket*; *Donald Cameron the younger*, of *Lochiel*; *Doctor Archibald Cameron*, Brother to *Donald Cameron the younger*, of *Lochiel*; *Ludovick Cameron of Tor-Castle*; *Alexander Cameron of Dungallon*; *Donald MacDonald of Clanronald junior*, Son to *Rhonald MacDonald of Clanronald*; *Donald MacDonald of Lochgarie*; *Alexander MacDonald of Keppoch*; *Archibald MacDonald*, Son of *Col MacDonald of Barisdale*; *Alexander MacDonald of Glencoe*; *Evan MacPherson of Clunie*; *Lauchlan MacLauchlan of Castle-Lauchlan*; *John MacKinnon of MacKinnon*; *Charles Stewart of Ardsheil*; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart of Carnwath*; *Lawrence Oliphant the elder*, of *Gask*; *Lawrence Oliphant the younger*, of *Gask*; *James Graham the younger*, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharson of Monalterye*; *Alexander MacGillivray of Drumaglass*; *Lauchlan MacIntosh*, Merchant at *Inverness*; *Malcolm Ross*, Son of *Alexander Ross of Pitcalny*; *Alexander MacLeod*, Son to *Master John MacLeod*, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdaine*, Son to *William Lumsdale*, otherwise *Lumsdaine*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditors Office in the Exchequer of *Scotland*; of High Treason, if they shall not render themselves to One of his Majesty's Justices of the Peace, on or before the Twelfth Day of *July*, in the Year of Our Lord One thousand Seven hundred and Forty-six, and submit to Justice: The Tenour of which said Act We, for certain Reasons, have caused to be brought before Us into Our Chancery. And We do hereby command you, That, having inspected the Tenour of the said Act, you do further cause to be done thereon, that which of Right, and according to the Law and Custom of *England*, you shall see fit to be done. Witness Ourselves at *Westminster*, the Tenth Day of *February*, in the Twentieth Year of Our Reign.

The Tenour of the said Writ of *Certiorari*, and the Return made to the same; and also the Tenour of the said Act, in the said Writ mentioned, follow, in these Words:

The Writ of } *GEORGE* the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, To Our beloved *Ashley Cowper*, Esquire, Clerk of Our Parliaments, Greeting. We being willing (for certain Reasons) to be certified concerning the Tenour of a certain Act by Us Made and Enacted, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, at *Westminster*, the Seventeenth Day of *October*, in the Nineteenth Year of Our Reigh, intituled, An Act to attain *Alexander Earl of Kellie*; *William Viscount of Strathballan*; *Alexander Lord Pittligo*; *David Wemyss*, Esquire, commonly called *Lord Elcho*, eldest Son and Heir Apparent of *James Earl of Wemyss*; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William Viscount of Strathballan*; *Simon Fraser* Esquire, eldest Son and Heir Apparent of *Simon Lord Lovat*; *George Murray*, Esquire, commonly called *Lord George Murray*, Brother to *James Duke of Athol*; *Lewis Gordon*, Esquire, commonly called *Lord Lewis Gordon*, Brother to *Cosmo George Duke of Gordon*; *James Drummond*, taking upon himself the Title of Duke of *Perth*; *James Graham*, late of *Dunroon*, taking on himself the Title of Viscount of *Dundee*; *John Nairn*, taking upon himself the Title or Stile of *Lord Nairn*; *David Ogilvie*, taking upon himself the Title of *Lord Ogilvie*; *John Drummond*, taking upon himself the Stile or Title of *Lord John Drummond*, Brother to *James Drummond*, taking on himself the Title of the Duke of *Perth*; *Robert Mercer*, Esquire, otherwise *Nairn of Aldie*; *Sir William Gordon of Park*; *John Murray of Broughton*, Esquire; *John Gordon the elder*, of *Glenbucket*; *Donald Cameron the younger*, of *Lochiel*; *Doctor Archibald Cameron*, Brother to *Donald Cameron the younger* of *Lochiel*; *Ludovick Cameron of Tor-Castle*; *Alexander Cameron of Dungallon*; *Donald MacDonald of Clanronald junior*, Son to *Rhonald MacDonald of Clanronald*; *Donald MacDonald of Lochgarie*; *Alexander MacDonald of Keppoch*; *Archibald MacDonald*, Son of *Col MacDonald of Barisdale*; *Alexander MacDonald of Glencoe*; *Evan MacPherson of Clunie*; *Lauchlan MacLauchlan of Castle-Lauchlan*; *John MacKinnon of MacKinnon*; *Charles Stewart of Ardsheil*; *George*

George Lockhart, eldest Son and Heir Apparent of George Lockhart of Carnwath; Lawrence Oliphant the elder, of Gask; Lawrence Oliphant the younger, of Gask; James Graham the younger, of Airth; John Stewart, commonly called John Roy Stewart; Francis Farquharson of Monalterye; Alexander MacGillivray of Drumaglass; Lauchlan MacIntosh, Merchant at Inverness; Malcolm Ross, Son of Alexander Ross of Pitcalny; Alexander MacLeod, Son to Master John MacLeod, Advocate; John Hay, Portioner of Restalrig, Writer to the Signet; Andrew Lumsdale, otherwise Lumsdain, Son to William Lumsdale, otherwise Lumsdain, Writer in Edinburgh; and William Fidler, Clerk in the Auditor's Office, in the Exchequer of Scotland, of High Treason, if they shall not render themselves to One of his Majesty's Justices of the Peace, on or before the Twelfth Day of July, in the Year of Our Lord One thousand Seven hundred and Forty-Six, and submit to Justice; do command you, That, immediately after the Receipt of this Writ, you do distinctly and openly send before Us, into Our Chancery, the Tenour of the said Act, with all things touching the same, as fully and perfectly as the same now remains in your Custody; together with this Writ. Witness Ourself at Westminster, the Seventh Day of February, in the Twentieth Year of Our Reign.

The Return. } THE Execution of this Writ appeareth in a certain Schedule to this Writ annexed, as within I am commanded, Ashley Cowper, Esquire, Clerk Parliamentor. In the Parliament held at Westminster, the Seventeenth Day of October, in the Year of our Lord One thousand Seven hundred and Forty-five, and in the Nineteenth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and there continued by several Adjournments until and unto Wednesday the Fourth Day of June One thousand Seven hundred and Forty-six, by the Consent of the Lords as well Spiritual as Temporal, and of the Commons, and by the Assent of the King's Majesty then present, the following Statute (amongst others) was Ordained, Enacted, and Established, to wit, An Act, to attaint Alexander Earl of Kellie; William Viscount of Strathallan; Alexander Lord Pittligo; David Wemyss, Esquire, commonly called Lord Elcho, eldest Son and Heir Apparent of James Earl of Wemyss; James Drummond, Esquire, eldest Son and Heir Apparent of William Viscount of Strathallan; Simon Fraser, Esquire, eldest Son and Heir Apparent of Simon Lord Lovat; George Murray, Esquire, commonly called Lord George Murray, Brother to James Duke of Athol; Lewis Gordon, Esquire, commonly called Lord Lewis Gordon, Brother to Cosmo George Duke of Gordon; James Drummond, taking upon himself the Title of Duke of Perth; James Graham, late of Duntroon, taking on himself the Title of Viscount of Dundee; John Nairn, taking upon himself the Title or Stile of Lord Nairn; David Ogilvie, taking upon himself the Title of Lord Ogilvie; John Drummond, taking upon himself the Stile or Title of Lord John Drummond, Brother to James Drummond, taking on himself the Title of Duke of Perth; Robert Mercer, Esquire, otherwise Nairn of Aldie; Sir William Gordon of Park; John Murray of Broughton, Esquire; John Gordon the elder, of Glenbucket; Donald Cameron the younger, of Lochiel; Doctor Archibald Cameron, Brother to Donald Cameron the younger, of Lochiel; Ludovick Cameron of Tor-Castle; Alexander Cameron of Dungallon; Donald MacDonald of Clanronald, junior, Son to Ronald MacDonald of Clanronald; Donald MacDonald of Lochgarie; Alexander MacDonald of Keppoch; Archibald MacDonald, Son of Col. MacDonald of Barisdale; Alexander MacDonald of Glencoe; Evan MacPherson of Clunie; Lauchlan MacLauchlan of Castle-Lauchlan; John MacKinnon of MacKinnon; Charles Stewart of Ardsheil; George Lockhart, eldest Son and Heir Apparent of George Lockhart of Carnwath; Lawrence Oliphant the elder, of Gask; Lawrence Oliphant the younger, of Gask; James Graham the younger, of Airth; John Stewart, commonly called John Roy Stewart; Francis Farquharson of Monalterye; Alexander MacGillivray of Drumaglass; Lauchlan MacIntosh, Merchant at Inverness; Malcolm Ross, Son of Alexander Ross of Pitcalny; Alexander MacLeod, Son to Master John MacLeod, Advocate; John Hay, Portioner of Restalrig, Writer to the Signet; Andrew Lumsdale, otherwise Lumsdain, Son to William Lumsdale, otherwise Lumsdain, Writer in Edinburgh; and William Fidler, Clerk in the Auditor's Office in the Exchequer of Scotland, of High Treason; if they shall not render themselves to One of his Majesty's Justices of the Peace, on or before the Twelfth Day of July, in the Year of Our Lord One thousand Seven hundred and Forty-six; and submit to Justice.

Whereas Alexander Earl of Kellie; William Viscount of Strathallan; Alexander Lord Pittligo; David Wemyss, Esquire, commonly called Lord Elcho, eldest Son and Heir Apparent of James Earl of Wemyss; James Drummond, Esquire, eldest Son and Heir Apparent of William Viscount of Strathallan; Simon Fraser, Esquire, eldest Son and Heir Apparent of Simon Lord

Lovat ; *George Murray*, Esquire, commonly called Lord *George Murray*, Brother to *James Duke of Athol* ; *Lewis Gordon*, Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George Duke of Gordon* ; *James Drummond*, taking upon himself the Title of Duke of *Perth* ; *James Graham*, late of *Duntroon*, taking on himself the Title of Viscount of *Dundee* ; *John Nairn*, taking upon himself the Title or Stile of Lord *Nairn* ; *David Ogilvie*, taking upon himself the Title of Lord *Ogilvie* ; *John Drummond*, taking upon himself the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himself the Title of the Duke of *Perth* ; *Robert Mercer*, Esquire, otherwise *Nairn*, of *Aldie* ; Sir *William Gordon of Park* ; *John Murray of Broughton*, Esquire ; *John Gordon the elder*, of *Glenbuckett* ; *Donald Cameron the younger*, of *Lochiel* ; Doctor *Archibald Cameron*, Brother to *Donald Cameron the younger*, of *Lochiel* ; *Ludovick Cameron of Tor-Castle* ; *Alexander Cameron of Dungallon* ; *Donald MacDonald of Clanronald*, junior, Son to *Rhonald MacDonald of Clanronald* ; *Donald MacDonald of Lochgarie* ; *Alexander MacDonald of Keppoch* ; *Archibald MacDonald*, Son of *Col MacDonald of Barisdale* ; *Alexander MacDonald of Glencoe* ; *Evan MacPhereson of Clunie* ; *Lauchlan MacLauchlan of Castle-Lauchlan* ; *John MacKinnon of MacKinnon* ; *Charles Stewart of Ardsheil* ; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart of Carnwath* ; *Lawrence Oliphant the elder*, of *Gask* ; *Lawrence Oliphant the younger*, of *Gask* ; *James Graham the younger*, of *Airth* ; *John Stewart*, commonly called *John Roy Stewart* ; *Francis Farquharson of Monalterye* ; *Alexander MacGillivray of Drumaglass* ; *Lauchlan MacIntosh*, Merchant at *Inverness* ; *Malcolm Ross*, Son of *Alexander Ross of Pitcalny* ; *Alexander MacLeod*, Son to Master *John MacLeod*, Advocate ; *John Hay*, Portioner of *Restalrig*, Writer to the Signet ; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh* ; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland* ; on or before the Eighteenth Day of *April*, in the Year of our Lord One thousand Seven hundred and Forty-six, did, in a traitorous and hostile Manner, take up Arms, and levy War, against his present most gracious Majesty, within this Realm, contrary to the Duty of their Allegiance ; and are fled, to avoid their being apprehended, and prosecuted, according to Law, for their said Offences ; Be it therefore Enacted, by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, if the said *Alexander Earl of Kellie* ; *William Viscount of Stratballan* ; *Alexander Lord Pittligo* ; *David Wemyss*, Esquire, commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James Earl of Wemyss* ; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William Viscount of Stratballan* ; *Simon Fraser*, Esquire, eldest Son and Heir Apparent of *Simon Lord Lovat* ; *George Murray*, Esquire, commonly called Lord *George Murray*, Brother to *James Duke of Athol* ; *Lewis Gordon*, Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George Duke of Gordon* ; *James Drummond*, taking upon himself the Title of Duke of *Perth* ; *James Graham* late of *Duntroon*, taking on himself the Title of Viscount of *Dundee* ; *John Nairn*, taking upon himself the Title of Lord *Nairn* ; *David Ogilvie*, taking upon himself the Title of Lord *Ogilvie* ; *John Drummond*, taking upon himself the Stile or Title of Lord *John Drummond*, Brother to *James Drummond*, taking on himself the Title of Duke of *Perth* ; *Robert Mercer*, Esquire, otherwise *Nairn*, of *Aldie* ; Sir *William Gordon of Park* ; *John Murray of Broughton*, Esquire ; *John Gordon the elder*, of *Glenbuckett* ; *Donald Cameron the younger*, of *Lochiel* ; Doctor *Archibald Cameron*, Brother to *Donald Cameron the younger*, of *Lochiel* ; *Ludovick Cameron of Tor-Castle* ; *Alexander Cameron of Dungallon* ; *Donald MacDonald of Clanronald*, junior, Son to *Rhonald MacDonald of Clanronald* ; *Donald MacDonald of Lochgarie* ; *Alexander MacDonald of Keppoch* ; *Archibald MacDonald*, Son of *Col MacDonald of Barisdale* ; *Alexander MacDonald of Glencoe* ; *Evan MacPhereson of Clunie* ; *Lauchlan MacLauchlan of Castle-Lauchlan* ; *John MacKinnon of MacKinnon* ; *Charles Stewart of Ardsheil* ; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart of Carnwath* ; *Lawrence Oliphant the elder*, of *Gask* ; *Lawrence Oliphant the younger*, of *Gask* ; *James Graham*, the younger, of *Airth* ; *John Stewart*, commonly called *John Roy Stewart* ; *Francis Farquharson of Monalterye* ; *Alexander MacGillivray of Drumaglass* ; *Lauchlan MacIntosh*, Merchant at *Inverness* ; *Malcolm Ross*, Son of *Alexander Ross of Pitcalny* ; *Alexander MacLeod*, Son to Master *John MacLeod*, Advocate ; *John Hay*, Portioner of *Restalrig*, Writer to the Signet ; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh* ; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland* ; shall not render themselves to one of his Majesty's Justices of the Peace, on or before the Twelfth Day of *July*, in the Year of our Lord One thousand Seven hundred and Forty-six, and submit to Justice for the Treasons aforesaid ; then every of them the said *Alexander Earl of Kellie* ; *William Viscount of Stratballan* ; *Alexander Lord Pittligo* ; *David Wemyss*, Esquire, commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James Earl of*

Wemyss; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William Viscount of Strathallan*; *Simon Fraser*, Esquire, eldest Son and Heir Apparent of *Simon Lord Lovat*; *George Murray*, Esquire, commonly called *Lord George Murray*, Brother to *James Duke of Athol*; *Lewis Gordon*, Esquire, commonly called *Lord Lewis Gordon*, Brother to *Cosmo George Duke of Gordon*; *James Drummond*, taking upon himself the Title of *Duke of Perth*; *James Graham* late of *Duntroon*, taking on himself the Title of *Viscount of Dundee*; *John Nairn*, taking upon himself the Title or Stile of *Lord Nairn*; *David Ogilvie*, taking upon himself the Title of *Lord Ogilvie*; *John Drummond*, taking upon himself the Stile or Title of *Lord John Drummond*, Brother to *James Drummond*, taking on himself the Title of *Duke of Perth*; *Robert Mercer*, Esquire, otherwise *Nairn*, of *Aldie*; *Sir William Gordon of Park*; *John Murray of Broughton*, Esquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*; *Doctor Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Castle*; *Alexander Cameron* of *Dungallon*; *Donald MacDonald* of *Clanronald*, junior, Son to *Rhonald MacDonald* of *Clanronald*; *Donald MacDonald* of *Lochgarie*; *Alexander MacDonald* of *Keppoch*; *Archibald MacDonald*, Son of *Col MacDonald* of *Barisdale*; *Alexander MacDonald* of *Glencoe*; *Evan MacPherson* of *Clunie*; *Lauchlan MacLauchlan* of *Castle-Lauchlan*; *John MacKinnon* of *MacKinnon*; *Charles Stewart* of *Ardshiel*; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gask*; *Lawrence Oliphant* the younger, of *Gask*; *James Graham* the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharson* of *Monalterye*; *Alexander MacGillivray* of *Drumaglass*; *Lauchlan MacIntosh*, Merchant at *Inverness*; *Malcolm Ross*, Son of *Alexander Ross* of *Pitcalny*; *Alexander MacLeod*, Son to *Master John MacLeod*, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*, not rendering himself, as aforesaid, and not submitting to Justice, as aforesaid, shall, from and after the said Eighteenth Day of *April*, in the Year of our Lord One thousand Seven hundred and Forty-six, stand and be adjudged attainted of the said High Treason, to all Intents and Purposes whatsoever; and shall suffer and forfeit as a Person attainted of High Treason by the Laws of the Land ought to suffer and forfeit: And every of the said Justices of the Peace are hereby required to commit every of them the said *Alexander Earl of Kellie*; *William Viscount of Strathallan*; *Alexander Lord Pittligo*; *David Wemyss*, Esquire, commonly called *Lord Elcho*, eldest Son and Heir Apparent of *James Earl of Wemyss*; *James Drummond*, Esquire, eldest Son and Heir Apparent of *William Viscount of Strathallan*; *Simon Fraser*, Esquire, eldest Son and Heir Apparent of *Simon Lord Lovat*; *George Murray*, Esquire, commonly called *Lord George Murray*, Brother to *James Duke of Athol*; *Lewis Gordon*, Esquire, commonly called *Lord Lewis Gordon*, Brother to *Cosmo George Duke of Gordon*; *James Drummond*, taking upon himself the Title of *Duke of Perth*; *James Graham* late of *Duntroon*, taking on himself the Title of *Viscount of Dundee*; *John Nairn*, taking upon himself the Title or Stile of *Lord Nairn*; *David Ogilvie*, taking upon himself the Title of *Lord Ogilvie*; *John Drummond*, taking upon himself the Stile or Title of *Lord John Drummond*, Brother to *James Drummond*, taking on himself the Title of *Duke of Perth*; *Robert Mercer*, Esquire, otherwise *Nairn*, of *Aldie*; *Sir William Gordon* of *Park*; *John Murray* of *Broughton*, Esquire; *John Gordon* the elder, of *Glenbuckett*; *Donald Cameron* the younger, of *Lochiel*, *Doctor Archibald Cameron*, Brother to *Donald Cameron* the younger, of *Lochiel*; *Ludovick Cameron* of *Tor-Castle*; *Alexander Cameron* of *Dungallon*; *Donald MacDonald* of *Clanronald* junior, Son to *Rhonald MacDonald* of *Clanronald*; *Donald MacDonald* of *Lochgarie*; *Alexander MacDonald* of *Keppoch*; *Archibald MacDonald*, Son of *Col MacDonald* of *Barisdale*; *Alexander MacDonald* of *Glencoe*; *Evan MacPherson* of *Clunie*; *Lauchlan MacLauchlan* of *Castle-Lauchlan*; *John MacKinnon* of *MacKinnon*; *Charles Stewart* of *Ardshiel*; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart* of *Carnwath*; *Lawrence Oliphant* the elder, of *Gask*; *Lawrence Oliphant* the younger, of *Gask*; *James Graham* the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis Farquharson* of *Monalterye*; *Alexander MacGillivray* of *Drumaglass*; *Lauchlan MacIntosh*, Merchant at *Inverness*; *Malcolm Ross*, Son of *Alexander Ross* of *Pitcalny*; *Alexander MacLeod*, Son to *Master John MacLeod*, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office in the Exchequer of *Scotland*; so surrendering himself to Prison for the said High Treason, there to remain till he shall be discharged by due Course of Law; and thereof immediately to give notice to one of his Majesty's Principal Secretaries of State.

I *Ashley Cowper*, Clerk of Parliaments, by virtue of the Writ of our said Lord the King of *Certiorari* to me directed, and to these Presents annexed; do certify; That what is above written is the true Tenor of the Act of Parliament abovesaid in that Writ expressed. In Witness whereof, to this Schedule I have set my Seal, and subscribed my Name. Dated the Ninth Day of *February*, in the Twentieth Year of the Reign of our said Lord the King, and in the Year of our Lord One thousand Seven hundred and Forty-six.

ASHLEY COWPER.

Plea of *John Murray*. } AND now (that is to say) upon *Thursday* next after the Octave of the Purification of the Blessed Virgin *Mary*, before our said present Sovereign Lord the King at *Westminster*, cometh the said *John Murray* in the said Act named, under the Custody of the Lieutenant of the *Tower of London*, by virtue of his Majesty's Writ of *Habeas Corpus ad subjiciendum*, &c. into whose Custody he the said *John Murray* had been before committed, upon the Account abovesaid, being brought to the Bar here in his own proper Person, who is committed by the Court to the said Lieutenant of the said *Tower of London*, charged as a Person attainted of High Treason by virtue of the said Act: And being asked by the Court here, at the Instance of Sir *Dudley Ryder*, Knight, Attorney General of our said present Sovereign Lord the King, who, for our said present Sovereign Lord the King, in this behalf prosecuteth, If he the said *John Murray* hath; or knoweth of, any thing to say for himself, why the Court here should not proceed to award Execution against him thereupon, he the said *John Murray*, for Plea, saith, That it is very true, that he is one of the Persons in the said Act named and intended; to wit, the Person therein designed and described by the Name, Stile, and Addition, of *John Murray of Broughton*, Esquire, against whom, with the rest of the Persons therein named, designed, and described, the said Act was made, passed, and intended, for and on account of the High Treason therein mentioned, and thereby supposed to have been committed against our said present Sovereign Lord the King: But, for further Plea, he saith, That, long before the Twelfth Day of *July* in the said Act mentioned; to wit, upon the Twenty-eighth Day of *June* then last past, he the said *John Murray*, at the City of *Edinburgh* in the Shire of *Edinburgh*, did, in due Manner, and according to the Directions, and agreeable to the true Sense, Intent, and Meaning of the said Act, render himself to the Right Honourable *Andrew Fletcher*, Esquire, Lord Justice Clerk of *Scotland*, being one of his Majesty's Justices of the Peace in the said Act mentioned and intended for that Purpose (he the said *Andrew Fletcher* having then and there full Power and Authority, by virtue of the said Act, to admit him the said *John Murray* to make such Render of himself to him the said *Andrew Fletcher*, as abovesaid); and that he the said *John Murray* was, upon the said Twenty-eighth Day of *June*, in consequence of such Render, as abovesaid, committed by him the said *Andrew Fletcher* to Prison, for and on account of the said High Treason, according to the Directions, and agreeable to the true Sense, Intent, and Meaning, of the said Act; and that he the said *John Murray* hath, ever since his said Render and Commitment, as abovesaid, until now, remained and continued, and still doth remain and continue, a close Prisoner, upon the Account abovesaid; and this he is ready to verify and prove, as the Court shall award: With this further, That, at the Time of his said Render and Commitment, as abovesaid, he the said *John Murray* was, and ever since hath been, and yet is, willing and desirous to take his Tryal, and submit himself to Justice, pursuant to the Directions, and agreeable to the true Sense, Intent, and Meaning, of the said Act.

Confession of the Attorney General. } AND the said Sir *Dudley Ryder*, Knight, Attorney General of our said present Sovereign Lord the King, who, for our said present Sovereign Lord the King, in this behalf prosecuteth, having heard and considered the said Plea of him the said *John Murray*, by him now pleaded in Form abovesaid, he the said Attorney General for our said present Sovereign Lord the King saith, That he doth not in any wise deny any of the Matters in the said Plea alleged; but doth now here in Court, for and on behalf of our said present Sovereign Lord the King, and by the special Order and Command of our said present Sovereign Lord the King, admit and confess the same to be in all respects true: Whereupon it is considered and adjudged by the said Court here, That the said Plea of him the said *John Murray*, for him so above pleaded, as abovesaid, and also the said Confession of the said Attorney General by him so made of the said Plea, as abovesaid, be recorded; and that he the said *John Murray* be remanded to the said *Tower of London*, under the Custody of the said Lieutenant, to be by him there kept in safe Custody, until he shall be from thence discharged by due Course of Law.

Mr.

Mr. Attorney General. My Lords, we desire that Mr. *Murray* may now be sworn.

Lord Lovat. My Lords, I desire Leave to falsify the Record, and to prove, by Witnesses, that Mr. *Murray* did not surrender himself within the Time prescribed by the Act of Parliament.

Mr. Attorney General. My Lords, what the noble Lord at the Bar now insists upon, is, that he shall be at Liberty to falsify the Record, by shewing, by Witnesses, that Mr. *Murray* did not surrender himself according to the Act of Parliament; but I must submit it to your Lordships, that there is no Ground whatsoever to admit the Prisoner to go into that Kind of Evidence; because this is a Record, which, according to the known Rules of Proceeding, cannot be falsified, since it is a Proof of a Thing transacted in a Court of Justice, before whom it was properly cognizable, and who alone, in this Part of the United Kingdom, could hear it, and had Power to record it; and I therefore must insist, that it is out of the Power of any Person whatsoever to contradict that Record.

Lord High Steward. My Lord *Lovat*, the Managers insist, that it appearing by Matter of Record, that Mr. *Murray* did surrender himself according to the Act of Parliament, that Matter cannot now be falsified.

Lord Lovat. My Lords, I must beg, that, since it is a Point of Law, your Lordships will be pleased to hear my Counsel to it.

Mr. Attorney General. My Lords, as to its being a Question of Law, whether the noble Lord at the Bar shall be at Liberty to produce Witnesses to falsify that Record; to be sure, my Lords, it is a Question of Law, because it cannot be said to be a Question of Fact; but it does not follow as a Consequence, because the noble Lord at the Bar says, that he has a Point of Law to submit to your Lordships, that therefore your Lordships should permit his Counsel to argue it: For it is still in your Lordships Judgment, whether you have any Doubt concerning it; and it is apprehended, that this is too plain a Case to admit of any Doubt with your Lordships; and therefore that you will not permit Counsel to argue it, as the Consequence can only be Delay; and an Indulgence of this Kind, in Matters of no Doubt, would put it in the Power of a Prisoner to protract his Tryal, and keep your Lordships sitting as long as he pleased.

Sir John Strange. My Lords, I beg Leave to have it clearly understood, what it is that the noble Lord at the Bar insists upon; whether it be to prove, by Witnesses, that Mr. *Murray* was not in Custody within the Time prescribed by this Act of Parliament; or that Mr. *Murray* did not surrender himself, and submit to Justice within that Time.

Lord Lovat. I put it upon that strict Word, that he did not *surrender himself*.

Lord High Steward. Lord *Lovat*, does your Lordship desire to be heard by your Counsel to that Point?

Lord Lovat. Yes.

Mr. Forrester. My Lords, it would ill become me, in the Station of Counsel for the noble Lord at the Bar, to decline arguing any Point which he thinks may be of Service to him. The Question now made by the noble Lord is singly this, Whether he shall be at Liberty to adduce Witnesses, *viva voce*, to falsify the Contents of this Record; that is, to prove that Mr. *Murray* did not surrender himself within the Time prescribed by the Act; which being closely connected to the former Objection, I can at present, and until I have Time to consider the Question, do little else but what would be extremely indecent in me, repeat a great Part of what I troubled your Lordships with in the Morning, and which is now over-ruled. But, my Lords, the debating this Point may lead to the Consideration of another, and indeed a very material one; which is, Whether Evidence of his being *taken Prisoner* by the King's Forces will make it a *Surrender* within the legal Construction of the Act of Parliament, so as to warrant his Plea, and the Attorney General's Confession contained in the Record; and this I shall, in Point of Law, beg Leave to deny, upon the Authority of Lord *Duffus's* Case, and several other Cases. Your Lordships are to determine, whether we shall be heard to these Points or not: But, if I am at Liberty to speak to them, as they are both Questions of great Difficulty, I must beg some further Time for preparing myself, and laying my Thoughts together; since, at this Hour of the Night, and unprepared as I am, it is impossible to argue them so fully as my Duty requires, as the noble Lord has a Right to expect from me, and as your Lordships have a Right to expect Matters to be debated at your Bar.

Lord Lovat. My Lords, I am so very weak and infirm, and have been obliged, in order to attend in Obedience to your Lordships Commands, for two Days together, to be up by Three o'Clock in the Morning; I must therefore beg, that your Lordships will indulge me with a later Hour, and some Respite; otherwise I shall die at your Bar.

Mr. Attorney General. My Lords, I did apprehend, from what the noble Lord at the Bar said, that the Point he wanted to submit to your Lordships was, Whether he should not be at Liberty

Liberty to bring Witnesses to prove, that Mr. *Murray* did not surrender himself within the Meaning of the Act: But something has dropt since from the Prisoner's Counsel, as if they meant to shew, that Mr. *Murray* did not, in Fact, surrender, but was taken Prisoner before the Time given by the Act to surrender; and that this would not, in Point of Law, be a Surrender within the Act. My Lords, that is a Question totally different from the former. It is one Question, whether he may be admitted to prove, that he did not surrender according to the Act of Parliament; and another, what would be the legal Effect of his being apprehended previous to the Time appointed: They are two intirely distinct Questions; and whether they shall be admitted to argue the former, is now for your Lordships Consideration; but as to the latter, it is a Matter subsequent, and not now to be considered.

Then the Duke of *Newcastle* moved to adjourn to the Chamber of Parliament, and the Lord High Steward went back to his Chair; and the House was adjourned accordingly.

The Lords and others went back in the same Order as before; and the House being resumed in the Chamber of Parliament, after Debate,

Ordered, That this House will proceed further in the Tryal of the said Lord *Lovat* To-morrow at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by Mr. *Elde* and Mr. *Thurston*, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do take back the said Lord *Lovat*, and bring him again to the Bar of this House in *Westminster-Hall*, at Eleven of the Clock in the Forenoon To-morrow.

Wednesday the 11th of March, 1746.

THE THIRD DAY.

ABOUT Eleven of Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on *Monday* last, into *Westminster-Hall*; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes, Lieutenant of the *Tower of London*, bring forth your Prisoner *Simon Lord Lovat* to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar, in the like Manner as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

Lord High Steward. My Lord *Lovat*, your Lordship thought fit Yesterday to insist upon it, that, notwithstanding the Record, produced by the Managers for the House of Commons, of Mr. *John Murray* of *Broughton's* having surrendered himself within the Time, and according to the Terms prescribed by an Act of Parliament made in the 19th Year of his Majesty's Reign, your Lordship should be permitted to give Evidence, by Witnesses *viva voce*, that Mr. *Murray* did not surrender himself within the Time prescribed by that Act. To this Kind of Evidence the Managers for the House of Commons objected, because, as they alleged, it was giving Evidence to contradict a Fact which was verified by a Record of the highest Nature; and that therefore you should not be permitted to enter into such Proof: Whereupon you desired, that your Counsel might be heard to that Matter, as a Point or Question of Law. Against this the Managers thought fit to object, that it was no Doubt or Question of Law at all; that the Law of the Land was full, and clear, and settled in this Point; and that therefore your Lordship ought not to be heard by your Counsel to it. The House has taken all these Matters into Consideration, in the Chamber of Parliament; and hath come to the following Resolution, with which they have directed me to acquaint you; and it is this, That the Counsel for the Lord *Lovat* be not permitted to argue,

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that

that Parol Evidence should be received to prove, that *John Murray* of *Broughton* did not surrender himself according to the Act made in the last Session of Parliament in that behalf, in Contradiction to the Record of the Court of King's Bench, produced by the Managers for the Commons.

The Lord High Steward asked Leave to go down to the Table: Which was done.

Lord High Steward. Gentlemen of the House of Commons, you may proceed.

Mr. Noel. My Lords, we now desire that *Mr. Murray* of *Broughton* may be sworn.

Lord Lovat. My Lords, I did object against *Mr. Murray's* being examined as a Witness: Your Lordships have been pleased to over-rule that Objection, and I now submit, that *Mr. Murray* may be examined, if you please.

John Murray called in, and sworn.

Lord Talbot. My Lords, I desire to ask *Mr. Murray* some Questions for the sake of forming my own Judgment in the Matter; but if it is improper, that they should be asked, I submit it to your Lordships.

Lord High Steward. My Lords, the ordinary Method of proceeding in these Cases is, that where a Witness is produced, he is to be sworn in Chief, unless there be some Objection to his Competency; and then he is to be sworn upon a *Voire Dire*. After he is sworn in Chief, the Party, who produces him, asks him such Questions as he thinks proper; after which the other Party is at Liberty to cross-examine him either to the Matter of Fact, concerning which he has been examined, or any other Matter whatsoever, that shall tend to impeach his Credit, or weaken his Testimony; provided the Questions that are asked him, are such as the Law allows: So in this Court, after the Managers have produced any Witness, and have finished their Examination of him, the Prisoner has Liberty to ask him whatever Questions are proper; and it is most regular, that, after both Sides have gone through with their Examinations of the Witness, any of your Lordships should ask him what Questions you shall judge proper.

Mr. Noel. *Mr. Murray*, you will be pleased to attend to the Questions that shall be asked you. Give your Answers distinctly, and raise your Voice as much as you can, that my Lords may hear you.—My Lords, the first Thing I desire of this Witness is, that he may give your Lordships an Account when was the first Time that he heard of any Invitation to the Son of the Pretender to come into *Scotland*, and from whom he heard it.

Mr. Murray. My Lords, to the best of my Remembrance, in the Month of *February*, 1741-2, when I was at *Edinburgh*, I had there Occasion to see my Lord *Traquair*, who told me, that there were several Gentlemen, to the best of my Memory, the Prisoner at your Lordships Bar, my Lord *Perth*, my Lord *John Drummond*, Sir *James Campbell* of *Achenbreck*, and *Mr. John Stuart* Brother to Lord *Traquair*, had employed one *Drummond* of *Bockaldie*, to go from *Scotland* to *Rome*, to assure the Pretender of their Zeal for his Service; and that they would be ready and willing, as soon as sufficient Assistance could be had from *France*, to appear publickly in Arms for him: And, at the same time, he said, that he had given *Drummond* a Memorial signed by those Persons, I think Seven of them in Number, to Cardinal *Fleury*, expressing their Attachment to the Pretender, and desiring him to procure Assistance from the Court of *France*; and at the same time this *Drummond* carried with him a List of all the People, that, by those Gentlemen, were supposed to be ready and willing to join in the Pretender's Service.

Lord Lovat, interrupting,

My Lords, Your Lordships will be pleased to consider, that what this Gentleman says, is only Hearsay Evidence, which should not be admitted before your Lordships, as it gives you a bad Impression of a Man. I am now trying for my Life and Fortune, and hope your Lordships will consider it.

Mr. Noel. My Lords, I am so far from differing from the noble Lord at the Bar in this respect, that I did understand the Witness was speaking only what he had heard from my Lord *Traquair*.

Mr. Attorney General. My Lords, The Managers do know and desire, that your Lordships will distinguish between Evidence that does, and Evidence that does not, affect the Prisoner at the Bar. The Witness was giving an Account by way of Introduction; which will be material for your Lordships Consideration. I beg Leave to say, it is impossible for a Witness, in his giving an Account of a Transaction, to speak nothing but Words that alone will affect the Prisoner; and therefore this, though it does not affect the Prisoner, may be proper to introduce that, which he has to say, that may affect him. What he now says, is

only giving an Account of a Plot or Conspiracy entered into by several Persons, which did afterwards bring on the Rebellion.

Lord High Steward. My Lord *Lovat*, The Managers do admit, that what has been hitherto said by the Witness under Examination, does not affect you; and they desire now to offer it only as Evidence of a Conspiracy in general, which, if they do not apply to your Lordship by particular Evidence, will not affect you.

Lord Lovat. My Lords, As I said before, it gives a bad Impression.

Lord Coke. My Lords, I apprehend, that we are right in going into this Kind of Evidence; because, in the Preamble to our Articles of Impeachment, we set forth the general Conspiracy.

Mr. Solicitor General. My Lords, What has hitherto been said, is not Evidence against the noble Lord at the Bar; and God forbid that he should be affected by any thing that is not strictly Evidence against him! And therefore it is fit, that the View with which the Evidence is offered, should be fully understood. The Preamble to the Articles of Impeachment asserts, That, ever since the Breaking out of the War, and particularly in 1743, many Persons have plotted, and conspired with the Enemy, to procure an Invasion of this Kingdom by a Foreign Force, and to raise a Rebellion at Home. The First Article charges Lord *Lovat* to have been one of those Conspirators. It is necessary therefore, by general Evidence, to shew, that there have been such Plots and Conspiracies as the Commons assert, and then to affect the noble Lord at the Bar, by proper Evidence, with being concerned in those Plots. This Method of Proceeding is not new, but the established Course. Upon the Impeachment of the Lord Viscount *Stafford*, a general Evidence was given of the Conspiracy, which was declared not to affect him, but as introductory only. The like was done upon the Tryals at Law of the Persons accused of having been in the same Plot. The same Method was allowed as proper, and liable to no just Objection, in many Tryals after the Revolution. In the Reign of the late King, upon the Tryal of *Laver*, the like Method was pursued: General Evidence was given of a Plot which did not directly affect him. I dare answer for the Gentlemen who manage this Prosecution, that no one of us will urge against the noble Lord any thing which is not brought home to him by strict and legal Proof: If we should, he is safe in your Lordships Judgment, which will distinguish general from particular Evidence.

Then the Witness was directed to go on with his Narrative.

Mr. Murray. My Lords, I mentioned to your Lordships, That at the same time that *Drummond* went over to *Paris*, he carried with him a List of all the Gentlemen in *Scotland*, who, it was supposed by those who signed this Memorial, were ready and willing to join them: But this List I take rather to be a general List of the Highlands of *Scotland*; nor do I imagine there could be any Reason to think, that the great Number of People there mentioned, could appear in favour of the Pretender. My Lord *Traquair*, at the Time of his informing me of this, told me, that *Drummond* was then in *Edinburgh*; and proposed, that I should have a Meeting with him. Accordingly, I had a Meeting with him; and he repeated to me much the same thing that I have repeated to your Lordships: Said he had been extremely well received by the Cardinal, to whom he had delivered the Memorial given him at *Edinburgh*: That he expressed much Satisfaction, and was very sanguine, and had the Pretender's Interest very much at Heart; and that, provided he could get sufficient Assistance and Assurance from those who are called the Pretender's Friends in *England*, that then he would send over the Troops required; the Number was 3000 Men, to be landed in *Scotland*; 1500 at or near *Inverness*, so as immediately to join with the Clan of the *Frasers*; the other 1500 were to be landed on the West-Coast, near *Cameron's* of *Lochiel*, who was to take the Command of them upon him, and to raise the People of *Argyllshire*: At the same time, a Body of Ten or Twelve thousand Men were to be landed as near *London* as they possibly could.—That at the same time *Drummond* was in *Edinburgh*, he sent for *Cameron*; and, when they met, he repeated what had past, and the Success he had at *Rome* and *Paris*; and assured them, that provided he could have Assistance in *England*, the Scheme might be put in Execution in Autumn following. After a Week's Stay in *Edinburgh*, *Drummond* went to *London*. I do not remember to have heard any thing more concerning this Matter till the *August* following. This was, to the best of my Memory, the End of *March*, or Beginning of *April*, that he left *Edinburgh*.

Lord High Steward. What Year was it in?

J. Murray. 1742. We call it so in *Edinburgh*.

Lord High Steward. You begin the Year in *Scotland* on the 1st of *January*.

J. Murray. Yes.

My Lords, in the Autumn following, when I was at my Lord *Traquair's* House in the Country, he told me he understood by *Drummond*, that Cardinal *Flury* proposed sending a
Body

Body of *Swedish* Troops into *Scotland*, thinking they might be more agreeable to the People there, as they were Protestants, than *French* or *Irish* Brigades would be: But, at the same time, said, he thought it would be necessary, that a Person should be sent from *Scotland*, to be deputed to solicit those Troops from *Sweden*, in Conjunction with the Person whom the Cardinal should employ. My Lord *Traquair* thought, that I should go on that Account: But I think it was rather *Drummond's* than my Lord *Traquair's* Proposition.

Lord High Steward. When was this?

J. Murray. In *August* 1742. I refused to comply with this. From which Time I do not remember to have heard any thing for Six Months; and, about that Time, my Lord *Traquair*, and *Cameron* of *Lochiel*, at *Cameron's* House, did shew me a Letter written by *Drummond* from *Paris*; wherein he said, That, upon his Return to *France*, he had represented the thing to the Cardinal in such a Light as engaged him to promise, that, in a short Time, he would land the Troops in *Scotland*, as proposed. There were several other Circumstances in the Letter, which I cannot now remember: So far I can say, that Letter, in general, when it was read to me, seemed very extraordinary, to think, that an Affair of such Consequence as the invading these Kingdoms, and raising a Civil War in the Country, was to be undertaken by a few People, and by such kind of Management. I said, I apprehended it was a Scheme of *Drummond's*, to keep up a Spirit of Party in this Country, and to make himself useful to the Gentlemen who employed him; and that there was no such thing intended by Cardinal *Fleury*. My Lord *Traquair* determined, that it was then necessary to know the real State of the Case; and he desired I would go to *Paris* for that Purpose. I at first did not comply with it; I did not care to execute it; nor did I agree to it till several Weeks afterwards: I was then coming to *London*; and in *January* I came up; but, upon the Road, I understood, that Cardinal *Fleury* was dead.

Lord High Steward. When was this?

J. Murray. In *January* 1743, by the *Scotch* Stile. I staid some short Time in *London*; and from thence I went over privately to *Paris*; and, by means of one *MacDonald* the Banker, I found out *Drummond*: He carried me that Evening to one Mr. *Semple*, who is there called my Lord *Semple*; and was the Person employed by the Pretender to manage his Affairs in *France*: They both joined in lamenting the Death of the Cardinal; and said, That, had he lived, in all Probability the Scheme would have been executed that Spring; that the Reason why it was not, was owing to the Marshal *Maillebois* having Orders from *France* to march his Army towards *Hanover*, instead of the Coast of *Flanders*, as the Cardinal intended; but that the Cardinal had been so extremely sanguine in the Pretender's Interest, that he had given all his Papers, Memorials, and the like, to M. *Amelot*, the then Secretary for foreign Affairs. I proposed to see M. *Amelot*; and accordingly I went to *Verfailles*, where I staid Two or Three Weeks. I was first presented by *Drummond* to *Semple*; and had an Audience of M. *Amelot*, whom I told I had been sent from *Scotland*, by the Persons who had signed the Memorial which I mentioned to your Lordships, and who were concerned in it, to know whether the King of *France* his Master was willing to put the Scheme in Execution. He told me, that Mr. *Semple* had acquainted him with the Reason of my coming: And thereupon he went to the King of *France*, and told him of it; and upon that I desired to know what Answer he had from the King of *France*. The Answer he gave me was, That the King told him, that I might assure those Gentlemen, that he had the Interest of their Master as much at Heart as they; and that, as soon as he had an Opportunity, he would put the Scheme they proposed in Execution. With this Answer I returned to *Paris*, where I only staid Two Nights. At first, I observed, that M. *Amelot* seemed very desirous to have such Assurances from *England* as the Cardinal had required; and he applied to *Drummond* and *Semple* on that Head. When I left *Paris*, Mr. *Drummond* determined to come over. I set out from *Paris*, and came privately to *London*. The Reason of Mr. *Drummond's* coming over, was to collect those Assurances which had been expected from *England*.

Lord High Steward. What Time was this?

J. Murray. It must have been the End of *March*, or Beginning of *April*.

Lord High Steward. In what Year was it?

J. Murray. In 1743.

I staid but a few Days in *London* after my Return; and Mr. *Drummond* desired me, that, as soon as I arrived in *Scotland*, I would acquaint my Lord *Traquair* of his being come to *London*, and the Reason of it; and desired, that he would come and assist in procuring the Assurances from the Pretender's Friends. Upon my Return to *Edinburgh*, I stopt at *York*, where I met with the late Lord *Perth*, who then was at *York*; and I acquainted him with what had been done, who seemed extremely dissatisfied at it. I soon afterwards came to *Edinburgh*; and, soon after my Arrival there, I met Lord *Traquair*, whom I acquainted with

with *Drummond's* being come over; and that he desired his Lordship to go to *London* to assist him in his intended Purpose. His Lordship went with that Intent (as he said) in about Two Weeks after, about the Beginning of *April*, to the best of my Remembrance. On Lord *Traquair's* Return to *Scotland*, in Autumn, he acquainted me, That he had several Meetings with *Drummond*; and that he had endeavoured to get as many Assurances as he could from the Pretender's Friends, at least such as he thought so: The Persons he named were Lord *Barrymore*, Sir *John Hinde Cotton*, and Sir *Watkin Williams Wynne*: That he had several Meetings with these several Persons; and that Sir *John Hinde Cotton* seemed extremely shy, and unwilling to converse or meet on the Pretender's Affairs; and none of them were willing to give any such Assurances under their Hands and Seals as were given by the Seven in *Scotland*. The same Summer one *Butler* was sent from *France*, to know the State of the *Jacobite* Party in *England*.

Lord Talbot. My Lords, I object to the Witness's proceeding to give Evidence which does not relate to the Point in Question: He has mentioned the Names of several Honourable Gentlemen, on a very extraordinary Occasion, which does not at all relate to the Tryal of the noble Lord at the Bar: He is calumniating the Characters of several Gentlemen, who are my worthy Friends: And therefore, if it is insisted, that he should proceed, I think it will be worth our while to adjourn to the Chamber of Parliament, to consider how far it shall be permitted.

Lord High Steward. Gentlemen of the House of Commons, You hear what is said by the noble Lord. It is objected, That the Witness is going on to give Evidence of a Fact not relating to the noble Lord at the Bar, but to other Persons; and that this is an improper Kind of Evidence, and ought not to be given.

Mr. Attorney General. My Lords, We did not examine the Witness to those particular Facts which he has mentioned, that do not relate to the noble Lord at the Bar; but in giving an Account of the Facts inquired into, he has himself entered into that Kind of Narrative; but as it is only what he heard my Lord *Traquair* say concerning other particular Persons, we do not insist on his proceeding in his Hearsay Account of what concerns those Gentlemen.

Mr. Noel. My Lords, What the Witness has dropt, in respect of the Honourable Gentlemen he has named, does not affect them at all. It is nothing more than a Relation which he had from my Lord *Traquair*, and not from any Matter arising within his own Knowledge. And, my Lords, I may venture to assure your Lordships, for myself and all the Gentlemen concerned in this Prosecution, that we will not ask the Name of one Person immaterial to the present Tryal: And therefore I must submit it to your Lordships, whether the Witness should not be suffered now to go on; and that, for the future, when he comes to any Transaction of that Kind, he should not name any Persons till he comes to the noble Lord at the Bar.

Lord High Steward. Your Lordships hear what is mentioned by the Managers, That they agree, that the Witness, in mentioning these Transactions in general, should not name any Persons, till he comes to the noble Lord at the Bar.

J. Murray. I was directed, that when I came to be examined here, I was to give a Narrative of the Springs, the Rise and Progress of the late Rebellion, as well as what related to the noble Lord at the Bar; but if I have committed an Error, I readily submit to your Lordships Correction.

Earl of Cholmondeley. As the Witness says he was directed to give a Narrative, with regard to the whole Rise and Progress of the Rebellion, I beg he may be asked by whom he was directed?

Lord High Steward. My Lords, I did not, at this Distance, hear the Witness use the Word *directed*; but understood him only, that he was brought here to give an Account of the Rise and Progress of the Rebellion. Possibly it might escape me.

Earl of Chesterfield. I did not hear the Word *directed*; but I should be glad to have it cleared up.

Lord High Steward. *Mr. Murray*, When you spoke last of your giving a Narrative of the Rise and Progress of the Rebellion, did you make use of the Word *directed*, or not?

J. Murray. My Lords, This is the first Time I ever spoke in Publick; I may have committed an Error; I cannot say whether I made use of the Word *directed*, or no.

Earl of Cholmondeley. My Lords, I had no other Intention in the Question, but to know the Meaning of the Person who spoke the Words; whether he apprehended, that the general Question, asked him by the Managers, was a Direction to him? and whether that was what he meant?

J. Murray. My Lords, Some Days after my Examination in the *Tower*, by the Honourable Committee of the House of Commons, a Gentleman, who I believed was their Secretary, came to me to take a further Examination; and to ask me as to any other Matter

that had occurred since my last Examination: Some Days after that, he told me, that I should be called here before your Lordships, upon the Tryal of my Lord *Levat*; and that, at the same time, it would be expected, that I should give an Account of the Rise and Progress of the Rebellion, in general.

Sir William Yonge. My Lords, Now the Witness at the Bar has explained what he meant by the Word *directed*, I hope your Lordships will have no ill Impression of the Managers, from any thing that may have dropped from the Evidence. And, my Lords, I beg Leave to assert, that no Direction has been given to Mr. *Murray* by the Managers; and that they neither have given, or will give, any Direction, to any Witness whatsoever. My Lords, we well know, that it does not become us to do any thing of that Kind; nor have we done it: So far from it, that when we first examined the Witness at the Bar, we examined him solely to the Point of the Conduct of the noble Lord at the Bar. My Lords, we did afterwards determine among ourselves, that, as it was our Duty to lay before your Lordships that Conspiracy wherein the noble Lord at the Bar appeared to have acted a Part; we did therefore give Mr. *Murray* Notice, that he would be examined before your Lordships to that Point. My Lords, we never had any Information from him on that Subject; and this is the first Time I ever heard him give an Account of this general Conspiracy. My Lords, we were so careful in our Examination of the Witness in the Committee, that I well remember the Question's being asked him by the worthy Manager who sits near me; and it was in the most general Terms that we could conceive, in order to let your Lordships into the Knowledge of this Matter. And your Lordships will observe, through the whole Course of this Proceeding, that the utmost Candour will be made use of by the Managers, in their Examination of the Witnesses; and that they will put no leading Questions to them but general Questions, and such as they are to answer upon Oath, and according to the Truth.

Earl of Cholmondeley. My Lords, I beg Leave to say, that I did not conceive, that the Managers, in their Examination of Witnesses, made use of the least Direction or Authority whatsoever. I have the greatest Sense of their Candour and Fairness; it is my Opinion of them, and of the whole Body by whom they are deputed; and it was upon that Principle I proposed my Question to the Witness.

Lord Talbot. My Lords, I pray that the Witness may be asked, whether he is, upon this Occasion, a voluntary or an involuntary Evidence.

Mr. Attorney General. My Lords, The Managers are now prosecuting for the whole Commons of *Great Britain*; they are prosecuting upon the Foundation of Evidence, for a Treason of the greatest Magnitude; there is now a Witness at your Lordships Bar, whom they are examining to prove that Treason; and, while they are so, I hope they shall not be interrupted. There is no Doubt, but when they have done with the Examination of the Witness, if any Lord thinks proper to ask him any Questions, your Lordships have a Right to do it: But we are now examining the Witness on behalf of the Prosecution; and we hope we shall have Liberty to go through with it; and then your Lordships will permit him to be examined by any body else: But, my Lords, at present we are in Possession of the Witness; and we beg we may have Liberty to go on.

Earl Stanhope. My Lords, I beg the Question proposed may be asked; or that we may adjourn to the Chamber of Parliament.

Lord High Steward. My Lords, The Rule for the Examination of Witnesses in this Court, in either House of Parliament, and every-where else, is, that, if a Witness is produced by a Prosecutor, or Plaintiff, they have a Right to examine him first: But, if any Objection is made to the Questions asked by the Prosecutors, whether they are Managers of the House of Commons upon an Impeachment, or Counsel upon an Indictment, the Objection is first to be considered; and if the Objection prevails, and is allowed, then the Question is not to be asked: But all Questions that are asked, whether touching the Matter of Fact to be tried, or the Credibility of the Witness, are to be asked at the proper Time. The Party who produces the Witness, has a Right to go through the Examination first; and then the other Side cross-examines him; and after that is over, the Judge asks him such Questions as he thinks proper, unless, as I said before, there be any Objection to the Questions, or any doubtful Matter arises, that was immediately to be cleared up. The same Method is to be observed here; and the Reason of it, my Lords, is, that, unless your Lordships observe this Method, you will be in perpetual Confusion.

Earl Stanhope. My Lords, The Question now proposed, arose from an Expression that just now dropped from the Witness.

The Witness proceeded in his Evidence.

J. Murray. My Lords, This *Butler*, whom I mentioned to your Lordships, was for some time in *England* during that Summer that my Lord *Traquair* was in *London*; when, to
cover

cover his Intention, he bought up a Number of Horses for the King of *France's* Use, and expressed himself so well pleased with the Encouragement he had from the Pretender's Friends in *England*, that he said, that, as soon as he went over, he would represent it in such a Light to the King of *France* his Master, as, he imagined, would induce him to send the Succours desired. Upon his Return to *Versailles*, where *Drummond* went with him. *Drummond* went to *Rome*, as he said, at the Desire of the *French* Court, to persuade the Pretender to send his Son to *France*. Accordingly, he did persuade him to do it; but *Drummond* returned to *France*, before the Pretender's Son left *Rome*. After *Drummond* went to *Paris*, he came to *London*, to acquaint the Friends of the Pretender in *England*, that the King of *France* was determined to send over a Body of Troops in the Spring. This came to my Knowledge by Two Letters from *Drummond*; the one written from *Paris* in *December*, and the other written from *London*. The First Letter he sent over, was not forwarded in time to my Lord *Traquair*; but, when *Drummond* returned, he found it lying here: He inclosed it in another Letter; and they both came to my Lord *Traquair's* Hands at *Edinburgh*. In the First Letter, he mentioned his intended Journey to *Rome*: In the Second, he mentioned his Return to *Paris*, and the Reason of his coming to *London*; and that he found the Pretender's Friends there very backward: That with Difficulty he had persuaded them to agree to the *French's* Landing. In this Letter, there were a great many Contradictions and Absurdities, in regard to the landing a Body of Troops in *Scotland* and *England* at the same time. It particularly mentioned, that Earl *Marshall* was to command the 3000 Men that were to come from *Dunkirk* to *Scotland*; and, at the End of the same Letter, he says, But I do not know how my Lord *Marshall* is to be equipped; which, with other Circumstances, determined us to write a Letter to *Drummond*, to desire him to explain himself. My Lord *Perth*, and my Lord *Traquair*, shewed me the Letter, and desired I would prepare a Letter to *Drummond*, desiring him to explain himself. Accordingly, I wrote a Letter in their Presence, which they both signed; and I believe, I cannot say positively, that I signed it myself. This Letter, as my Lord *Traquair* said, was sent to *London*, to be forwarded to *Drummond* at *Paris*; but the Person, to whom the Letter was delivered in *London*, wrote to *Drummond*, and told him, That such a Letter was in his Hands; and, desiring to know, whether he should send it to him at *Paris*, or not, *Drummond* said in Answer, That he should not send the Letter, lest it should be intercepted; but desired he would burn it.

Mr. Noel. What time was this?

J. Murray. In the Month of *January* 1743.

Mr. Noel. According to what Stile?

J. Murray. It was in the Year 1743, not long before the intended Imbarkation at *Dunkirk*.

Mr. Noel. When was that?

J. Murray. To the best of my Memory, in 1743.

Mr. Noel. Be pleased to recollect the Time; because it is very material.

J. Murray. It was about Two Months before the intended Invasion.

Lord High Steward. You may possibly recollect the Time from the other Circumstances. Do you remember the Year of the Battle of *Dettingen*?

J. Murray. I believe it was in the Year 1743.

Mr. Noel. How long was this after the Battle of *Dettingen* that you speak of? Or, was it in the *January* before, or after the Battle?

J. Murray. I believe it was the *January* following.

Mr. Noel. It would be proper for you to recollect from these Circumstances, if you can, whether it was in *January* 1743, or 1744, according to the *Scotch* Stile?

J. Murray. *January* 1744, by the *Scotch* Stile.

In Two Weeks after, there was another Letter came from *Drummond*, consisting of a few Lines only, wherein he said, That, in all Probability, before that Letter came to hand, the Pretender's Son would be landed in *England*, with the Troops under the Command of Marshal *Saxe*. From this time, to *July* following, so far as came to my Knowledge, there were no Accounts from Abroad. It was proposed to me, as I had then an Intention that Summer of going to *Flanders* to see the Army, that I should go the Length of *Paris*, to know in what Situation their Affairs then stood. The First time I declined it; but was afterwards brought to agree to it, upon being shewed a Letter of Mr. *Semple*; wherein he made a Number of Excuses for the intended Invasion's not taking Effect; and desired fresh Assurances from *Scotland*, and that Endeavours should be used in *England*: Upon which I was pressed to go. We then thought it extremely necessary that we should know upon what Footing Things really were. I accordingly came to *London*, and from thence I went to the Army in *Flanders*, staid only a few Days there, and then I went to *Holland*, and from thence, in a private Manner, to *Paris*. When I went to *Paris*, I was introduced to the Pretender's Son by *Drummond* and *Semple*. The First time I saw him, so far as I can remember,

ber, there was nothing essential passed. I desired to see him in private; which I accordingly did the next Day. My Design was to represent to him, that I thought the Persons employed by him at *Paris* were imposing upon him; and that they had no other Intention, but to serve themselves, to keep up the Spirits of the Party in *Britain*, and thereby make themselves necessary to the Party. With this Intent, I explained the Letter wrote by *Drummond*, endeavoured to shew the Contradictions in it, and that *Drummond* endeavoured to serve himself, and not him. He said at that time, he was determined to come to *Scotland*.

Mr. Noel. Who are you speaking of?

J. Murray. The Pretender's Son. He mentioned the Association; and said, He was determined to come into *Scotland*, and did not doubt but the King of *France* intended an Invasion in the Spring; but that he was then preparing for it, and intended to execute it as soon as the Campaign was over; and that, if he did not do it before, he was determined to come into *Scotland*. I endeavoured to shew him, that the Undertaking was desperate; and that he could not propose having above 4 or 5000 Men, supposing all the Friends he could expect, should be ready to join him: And it was seen afterwards, that he had not so many. Notwithstanding which, he insisted upon coming. I was so much against it, that I spoke to Sir *Thomas Sheridan*, a Person who lived with him for many Years, and told him of the Danger of such an Attempt; and that it would be the Ruin of many Families, and the Destruction of the Country. Sir *Thomas Sheridan* said, he would endeavour to persuade him against it; and, upon his Arrival in *Scotland*, told me he had; but to no Purpose. After staying a few Days in *Paris*, I returned to *Scotland*, where I gave an Account, not to all, but to some of the Persons concerned in the Memorial, of what had passed; and every body, but my Lord *Perth*, declared against the Pretender's Son coming into *Scotland*: Upon which I wrote a Letter to him, representing the Opinion of his Friends in *Scotland*, and setting forth the bad Consequences of such an Undertaking. This Letter I committed to the Care of a Gentleman who was going to *London*, in the Month of *January* 1745, *Scotch* Stile. This was neglected to be forwarded, and was returned to me in the Month of *April* following. I, notwithstanding, endeavoured to forward that Letter several times; and there having been Occasion to send from the West of *Scotland*, by my Lord *Perth*'s Means, the Packet was sent to *France*; but could not arrive in time, before the young Pretender set out. In *June*, I received a Letter from the young Pretender, wherein he said, he was fully resolved and determined to come into *Scotland*; and that he was to set out in *June*, and proposed to come to the West of *Scotland*; and appointed Signals for his Landing. Upon the Receipt of this, I sent it, by an Express, to my Lord *Perth*; desiring him to forward the Letter, or the Contents of it, to *Cameron* of *Lockiel*'s House, because I began to reflect, that it would be necessary some Methods should be taken to inform the Gentlemen in the *Highlands*, who were supposed to be ready, and to see if they approved of it. Upon that, I went to *Cameron*'s House of *Lockiel*; who told me, That he had sent his Brother Doctor *Cameron*, with a Copy of that Letter, to the noble Lord at the Bar. Doctor *Cameron* returned the next Day, and said he had accordingly gone to the noble Lord's House; that he had told him he had Business of Consequence to impart to him; and that he had taken his Promise to mention nothing of what was to pass between them: Upon which, he shewed my Lord *Lovat* a Copy of the Letter. I cannot say these were the very express Words; but it was to this Effect. Upon which, the noble Lord at the Bar declared, That it was a foolish and rash Undertaking; and that he should not land; and, if he did, that none of the Men would join him. And this is what Dr. *Cameron* told me. And it was the Opinion of all those of the *Highlands*, that he should not land, but return. They desired I would write a Letter of the Opinion of those Gentlemen to the Pretender, and of the bad Situation the Country lay under; and to desire, as their utmost Wishes, that he would return to *France*; which Letter I did write: I wrote Two of them, and committed them to the Care of a Gentleman; and which Letters he received upon the Island.

Mr. Noel. Who received them?

J. Murray. The Pretender's Son. The First Notice I had of his Landing was by an anonymous Letter that I received about a Week after. It did not say expressly, that the Pretender was landed; but, by the Words of it, I judged it was so. I was desired to come to the House of Lord *John Drummond*: There I understood that he was landed; and, in a little Time after, joined him, at the House of *MacDonald* of upon the West Coast. About Ten Days after that, he erected a Standard in a Place called *Glengarie*; where he was joined by the *Camerons*, the *MacDonalds* of *Keppoch*, and a few of the *MacDonalds* of With those, he marched to the House of *MacDonald* of *Glengarie*. There was a Gentleman of the Name of *Frazer* of *Gortuleg*, whom he there applied to, and the Laird of *Lockiel*, as being Persons acquainted with the noble Lord at the Bar. *Lockiel* told me there was such a Person there; that there were Two Commissions granted by the old Pretender in favour of the

the noble Prisoner, which he desired the young Pretender to send. Accordingly, I asked him for those Commissions. He said they were in a Trunk, with other Papers, which he had left up the Country, by reason of the Approach of General *Cope*, who was then expected in the Country; but desired, at the same time, that Mr. *Kelly* might write a Commission; whether it was of Lieutenant-General, or no, I cannot say; but I saw the Commission written by Mr. *Kelly*. I was also to make an Apology to my Lord *Lovat*, why the original Commissions had not been sent. Whether I made the Apology verbally to Mr. *Frazer* of *Gortuleg*, or whether I did it by Letter, I cannot say. I did not see it put into the Packet, or sent; and I did not inquire whether he had received it, because I did not doubt of the thing. After the Arrival of the Pretender's Son at *Edinburgh*, nothing material relating to the noble Lord at the Bar happened between the last Time I spoke of, and the Time of his Arrival there. Some time after the Battle of *Preston-Pans*, *Cameron* of *Lochiel* came to me, and told me, That one *Hugh Frazer*, who had been Clerk, or Servant in some Capacity, to my Lord at the Bar, but was then an Attorney at *Edinburgh*, he was a fit Person to send to my Lord *Lovat*, to desire him to send out his Clan. I agreed that he should go; and he had Instructions so to do. Whether I wrote to my Lord *Lovat* by *Hugh Frazer*, or no, I cannot recollect; very probably I did; but cannot say positively I did. The next thing, in regard to the noble Lord at the Bar, that happened, was upon the Return of the *Highland Army* from *Derby* to *Glasgow*. There this *Hugh Frazer* came to *Glasgow*; and this was the First time I ever saw him after he left *Edinburgh*. He came at that time, as he said, from *Perth*, and was sent, by the Master of *Lovat*, to procure Arms for a few Men which he had under his Command, and to know where he should join the Army. It was then proposed to write to my Lord the Prisoner at the Bar, to endeavour to persuade him to appear publicly in favour of the Pretender. This was agreed to, and the Letter was wrote by *Cameron* of *Lochiel*, and signed by him, *Clunie MacPherson*, and myself. This Letter was delivered to *Hugh Frazer*, with one that was wrote by the Pretender's Son himself, a Letter of Compliment. I do not remember that there was any Commission, or any thing, sent, save these Two Letters, and a Letter which I wrote to the Master of *Lovat*, which was sent by *Hugh Frazer*. If there were any more sent, it is more than I can remember. *Hugh Frazer* at the same time asked, if there had not been a Patent granted by the old Pretender to create my Lord *Lovat* a Duke: To which *Lochiel* answered, That, if there had been any such granted, it was in the Hands of his Father *John Cameron*, who was then at *Dumblain*. It was for this Reason that I did not address this Letter or Packet to my Lord *Lovat*; but left that to the Management of *Hugh Frazer*, if he should find the Patent creating my Lord *Lovat* a Duke when he should come to *Dumblain*. *Hugh Frazer*, at the same time, answered, That my Lord *Lovat* had made a Proposal, that Lord *John Drummond* (it was either he, or my Lord *Strathballan*, who then commanded at *Perth*, or perhaps both of them) should march, with the Troops under his Command, to *Inverness*, and bring with him some more People of his own. The Proposal, if it came from my Lord *Lovat*, as *Hugh Frazer* said it did, was a very judicious one; and my Lord *Lovat* must have desired it to cover his Country from the Troops then under Lord *Loudon's* Command, as my Lord *Lovat* had left *Inverness* some little Time before that. And the next thing that occurs to me, with respect to the noble Lord at the Bar, is, that, while I was at *Inverness*, I received a Letter from the Hands of *Frazer* of *Gortuleg*. This, he said, came from my Lord *Lovat*; but wrote to me seemingly in some Clerk's Hand. This Letter was produced; but, one Paragraph of it being very remarkable, I asked *Gortuleg* the Meaning of it; and he said, That my Lord *Lovat* was desirous of having that Patent creating him a Duke, which he expected some time before. I said, That I had no such Patent; and told him, That he ought to put my Lord *Lovat* off from any such Expectation.

Mr. *Noel*. You said, That this Letter came to you at *Inverness*; pray when did it come to you?

J. *Murray*. It was in the End of *February*, or Beginning of *March*.

Mr. *Noel*. In what Year?

J. *Murray*. In the Year 1746.

Mr. *Noel*. According to the *Scotch* Stile?

J. *Murray*. Yes.

I had no Occasion either to see or hear from the Lord at the Bar, from that time for some Weeks after the Battle of *Culloden*; and, when in Company with *Lochiel*, I was informed, that my Lord *Lovat* was in that Country, and that he lay at the Place called *Glengary*; and there was a Boat sent to bring Lord *Lovat* to the other Side of the Lake, where a Meeting had been proposed by *Lochiel*. I believe that Meeting was accidental in regard to the noble Lord at the Bar, because *Lochiel* expressed great Satisfaction, that they should have Lord *Lovat's* Advice and Assistance. Another Reason which induced me to think so was, that

Cameron sent a Servant, with Two Horses, to procure Wine and Spirits from *Beaufort*, Lord *Lovat's* Seat, there being neither in that Part of the Country. *Cameron of Lochiel*, with some others, and I, came to the Place where Lord *Lovat* was: He was then upon the Side of a Lake.

Mr. Noel. What is the Name of that Place?

J. Murray. I heard it is called *Morell*, or *Morlaig*; but whether that is the real Place, I cannot say.

The First Night we were together, or rather the only Night that I was there, I do not remember that any thing material passed; but, in general, we told my Lord *Lovat*, that there was a Meeting to be the next Day; and that we should be very proud of his Advice. Accordingly, the next Day there was a Meeting of about Twelve or Thirteen Gentlemen, where we did desire the noble Prisoner at the Bar to give his Opinion. There were present *Cameron of Lochiel*, *Barisdale*, *John Roy Stewart*, old *Glenbuckett*, Dr. *Cameron*, and a Nephew of *Keppoch's*, and some few others. I cannot particularly remember them all.

Mr. Noel. You have not said whether the noble Lord at the Bar was there?

J. Murray. Yes: He was at that Meeting.

Mr. Noel. Did you see him there?

J. Murray. Yes. I proposed in that Meeting, that my Lord *Lovat* should give his Opinion. My Lord *Lovat* said, That, in his Opinion, the only thing for the Gentlemen there to do, was, to raise a competent Number of Men to protect their Country, Families, and Cattle, and endeavour to defend themselves.

Mr. Noel. To protect their Country! from what?

J. Murray. To protect or defend their Country from the King's Forces, who were then at *Inverness*: There were no other Forces. The Number of Men then proposed to be raised was 3000, or 3500; a compact Body, whom it was easy to find Provisions for. This Proposal was agreed upon; and the particular Number of Men that each Gentleman should bring was agreed upon. Among the others, the Clan of the *Frasers* was named for 400, to be commanded by the Master of *Lovat*: But my Lord *Lovat* himself would not answer for his Son; but required *Lochiel* to answer for him. My Lord *Lovat* said, That he was an old Man, and not able to do any thing himself; and that he would not answer for his Son's Abilities; but desired they would let *Lochiel* answer for him; and that he did not doubt but he would do it. *Lochiel* accordingly answered for him. There was a Sum of Money distributed there, and, I think, about Seventy *Loudors* given to the Servant of my Lord *Lovat*, to carry to his Son, as Ten Days Pay for the 400 Men, which he was to bring out.

Mr. Noel. Was my Lord *Lovat* present, or not, at the Time you speak of, when that Money was given to his Servant?

J. Murray. I cannot say positively whether my Lord *Lovat* saw the Servant get the Money; but it was distributed by a Person who was my Clerk; and my Lord *Lovat* was at the other End of the Room.

Mr. Noel. Was it in the same Room?

J. Murray. Yes: My Lord *Lovat* was in the same Room that the Money was distributed in. There were several Persons there, to whom Money was paid.

Mr. Noel. Can you name the Servant who received it for Lord *Lovat*?

J. Murray. No: I think he was called the Steward of my Lord *Lovat*.

Mr. Noel. From whence came the Money?

J. Murray. From *France*.

Mr. Noel. What was the Sum that came from *France*?

J. Murray. Thirty-five thousand *Loudors* at that time.

Proclamation was made for Silence.

After this Meeting was over, so far as I can remember, I, with *Lochiel*, crossed over to the opposite Side of the Lake; and my Lord *Lovat*, as I understood, and he himself proposed, remained there all that Night. Four or Five Days after, I had Occasion to be at a Place called *Glendesherrrie*, when my Lord *Lovat* was on the opposite Side, at a House formerly belonging to the Brother of _____ I went there to my Lord *Lovat* the next Day, with no Intention to speak to him of Business; but upon seeing his Servant, to whom the Money was given, I asked him, when he intended to send the Servant away with it? He said, he should go that Day, or the next; and then called a Person who was called his Secretary; and desired him to write a Letter to the Master of *Lovat*, in my Name: But what were the Contents of the Letter, or that I saw it, I cannot remember; but I took it in general, that the Contents of the Letter were to give the Master of *Lovat* the Reason why the Money was sent. I did not then stay above an Hour or Two with my Lord *Lovat*, but returned

turned to *Lockiel*. What was agreed upon at the Meeting, and proposed to be done, did not take Effect so soon as was expected ; neither indeed was there above Four or Five hundred Men in the Whole, that met, about Ten Days after the Time first proposed ; that Handful of Men were Two Days at *Lockiel's* House before the King's Troops marched Northwards, in Pursuit of them : Upon Intelligence, that the King's Troops were on their March, Two Men were ordered out, to see what Number of Men there were ; and if we could make any Head : They saw a great Number of Men ; upon which we retired to the Head of the Lake ; when it was determined, that we should disperse, and every one do the best he could for himself. From thence I went into the Country that belongs to the Clan *Ronald*, where I received a few Lines by a young Man, who said he was Servant to my Lord at the Bar ; wherein he said, It was necessary for him to have a Watch or Guard to attend him, of Twenty-two Men, and a Lieutenant ; and desired, that I might send him Money, to pay those Men Twenty Days Pay, I think it was. I do not remember, that I wrote any Answer to this Letter, because I had no Pen, Ink, or Paper ; but I gave the Servant Fifteen *Loudors*, having then not much Money ; and desired him to give it to my Lord *Lovat*. After that I had a Message from the noble Lord at the Bar, by one *Bishop MacDonald*, desiring, that I would see him before I left the Country ; but so far as I remember, it was nothing farther than Compliments. Since that Time till Yesterday, I never had the Honour to see the noble Lord at the Bar, nor had any Letters from him, nor corresponded with him.

Mr. Noel. Were the Fifteen *Loudors* that you sent to my Lord *Lovat*, Part of the *French* Money that was landed there ?

J. Murray. Yes, it was Part of the *French* Money.

Mr. Noel. My Lords, He has told your Lordships already, that the Men that were to be raised were to defend the Country against the King's Forces : Now I beg to know, whether it was mentioned, at that Meeting, where these Men were to march, or where to rendezvous.

J. Murray. It was proposed, that the general Rendezvous should be near the House of *Keppoch*. *Lockiel's* People, *Barisdale*, and *Clanronald's*, were to have rendezvoused upon the Lake, about Two Miles above *Lockiel's* House, and then to proceed to the general Rendezvous, by *Lockiel's*.

Mr. Attorney General. Pray, had you any blank Letters from the young Pretender, after he came to *England* ; or that were sent to you ?

J. Murray. I had Letters that were sent to me, and were not directed, but left with me, to deliver to such Persons as I thought willing to support the Cause.

Mr. Attorney General. Please to give an Account to my Lords, what those Letters were, and the Import of them.

J. Murray. I do not remember the exact Number of Letters, but I did receive a Number of Letters ; they were not directed, but left to be directed to such People in *Scotland* as were thought the best Friends to the Pretender, and proper to cultivate a Party for him in the Country.

Mr. Attorney General. Please to give an Account to my Lords, at what Time these Letters were delivered to you ; and by whom ?

J. Murray. There were some of the Letters, either Two or Three of them, that I brought with me from *Paris* ; and the others were sent to me ; but who delivered them to me, I cannot particularly remember.

Mr. Attorney General. Please to mention to my Lords, who delivered you the Letters you received at *Paris*.

J. Murray. The young Pretender himself.

Mr. Attorney General. What were the Directions he gave then ?

J. Murray. There was a Credential attached to every Letter ; and they were to be delivered to such Persons as were disposed to promote his Interest in the Country.

Mr. Attorney General. And what was the Meaning of the Credential ? Was it signed by the young Pretender, or by any body ?

J. Murray. Yes, by him.

Mr. Attorney General. Please to give an Account to my Lords, to whom you delivered those Letters.

J. Murray. One of those Letters, together with the Credential, I delivered at *Edinburgh*, to the Laird of *MacLeod*.

Mr. Attorney General. Please to give an Account to my Lords, to whom you delivered any other of those Letters.

J. Murray. There was another of those Letters sent to Sir *Alexander MacDonald*.

Mr. Attorney General. You say it was sent ; then you did not deliver it yourself ?

J. Murray. No.

Mr. Attorney General. Do you know whether it was received, or no?

J. Murray. No, I never heard it was.

Mr. Attorney General. Please to give an Account to my Lords, of any other of these Letters which you delivered.

J. Murray. The other Letters, so far as I can remember, were put into the Custody of *Lochiel*, who was the proper Person to send them to the People who were to have them: As to those who had them, I cannot distinctly name them all; but my Lord *Perth* had one, I am sure.

Mr. Attorney General. What Time was it, that those several and respective Letters were delivered?

J. Murray. They were delivered in the Months of *November* and *December* 1744.

Mr. Attorney General. Was that after the Time you came from *Paris*?

J. Murray. Yes, it was.

Mr. Attorney General. Were they delivered, in order to forward the intended Invasion from *France*, which you gave an Account of before?

J. Murray. They were designed by the Pretender as Letters to be given to People who were most his Friends, to know whether or no they were ready to join him; and the Credential annexed was for them to forward his Interest in the Country.

Mr. Noel. You have told us, that a Computation was made, at that Meeting, of the Number of Men that could be raised; please to give an Account to my Lords, whether any particular Person, and who, mentioned the Number of Troops that might be raised?

J. Murray. It was the general Opinion, that 3000 Men should be raised; and my Lord *Lovat* said, that such a Number would be sufficient.

Mr. Noel. Did he mention any Proportion of Men that were to be raised by the Master of *Lovat*?

J. Murray. He mentioned 400 *Frasers*, to be raised by the Master of *Lovat*.

Lord High Steward. Gentlemen of the House of Commons, Have you done with the Examination of this Witness?

Mr. Attorney General. My Lords, We have done with this Witness at present.

Lord High Steward. My Lord *Lovat*, The Managers for the House of Commons declare, that they have done with this Witness at present: Will your Lordship ask him any Questions?

Lord Lovat. My Lords, I beg Leave to tell your Lordships, that I am the most incapable Man of the Three Kingdoms to make my Defence, because, as I mentioned to your Lordships before, I want both my Sight and my Hearing; and I therefore begged of your Lordships to allow my Counsel to examine my own Witnesses, and counter-examine the Witnesses against me; but your Lordships were not pleased to allow that. Your Lordships are much more capable of examining the Witnesses than I am; and therefore I shall refer it to your Lordships; and beg Leave to sit down. I will ask this Witness no Questions now.

Lord Talbot. My Lords, I beg Leave to ask this Question: Did you voluntarily surrender yourself to the King's Forces? or was you taken by the King's Forces?

J. Murray. I did not intend, at that particular Time, to surrender myself; and I presume it is not necessary for me to say now, whether I ever did intend it, or not: But at the Time that the Party of Dragoons came to the House where I then was, the Doors were shut, and I was in such a Position, as that I could have killed Two of them myself; but I rather chose to submit myself, and throw down my Arms.

Lord Talbot. My Lords, The Question that I ask is, Whether he did, or did not, voluntarily surrender himself? and whether his Intention was then to submit to the King's Forces?

J. Murray. I did say, that it was not my Intention then particularly, to submit myself; it was not my Intention till I saw the Dragoons.

Lord Talbot. Did you use any Means to make your Escape afterwards?

J. Murray. I never did.

Lord Talbot. Have you ever taken the Oaths of Allegiance and Fidelity to the King?

J. Murray. I never did.

Lord Talbot. Did you never take those Oaths, or Oaths of the same Nature, to any body else?

J. Murray. No.

Sir William Yonge. My Lords, We hope the Witness shall not be obliged to answer Questions of this Nature; it is a Question that tends to accuse himself of High Treason.

Lord Talbot. My Lords, I did not ask him any Question, to accuse himself of any Crime which he had not himself before confessed; and, as he had before accused himself of that Crime,

Crime, this may be said to be a Continuation of it, but cannot be said to be a fresh Accusation. I should not have asked him the Question, if he had not before accused himself.

Lord High Steward. My Lords, There is no Reason to spend your Lordships time upon this Point; for the Gentleman has already answered the Question.

Lord Talbot. Are you at present a Prisoner, or under Confinement?

J. Murray. Yes, I am, and have been ever since I came to the *Tower*.

Lord Talbot. Are you, upon this Occasion, a voluntary Evidence?

J. Murray. I should be glad to have the Meaning of that Question explained; and to know what is meant by a voluntary Evidence.

Lord Talbot. My Lords, The Meaning of the Question is, Whether the Witness is not an Evidence, in hopes of a Pardon? and whether, if he himself was pardoned, he would be an Evidence at all?

Mr. Attorney General. My Lords, on behalf of this Prosecution, I must oppose that Question's being asked. The Question, as I understand it, is, Whether the Gentleman under Examination is a Witness, in hopes of a Pardon? and whether he would be a Witness, if his Pardon had been obtained? My Lords, This is a Question, as I apprehend, not proper to be asked, because it is no Question as to any Matter of Fact at all, but only a Question concerning what the Witness would do, upon Supposition of a Fact which has not happened. I do not apprehend, that any Question can be asked of a Witness, but what concerns a Matter of Fact; not what a Witness would, or would not do, upon a future Contingency. The Question must tend to a Fact, and the Witness either is, or is not, capable of giving Evidence; but my Lords, to ask Questions of this Kind, is entering into the Recesses of a Man's Heart, which nobody has a Right to inquire into; and it is such a Sort of Question as I do not remember ever to have heard asked in a Court of Justice; and, perhaps, it is what the Witness is incapable of answering; for, till the Event happens, he cannot say what he would, or would not do. We therefore hope your Lordships will think, that this is an improper Question; and that the Thoughts, Inclinations, or Wishes of a Witness ought not to be inquired into here, where Matters of Fact only are to be tried.

Lord Talbot. My Lords, I asked the Question for this Reason, that I might know with what View his Evidence was given; and so judge of the Credibility of it. Do you believe your Life depends upon the Conformity of the Evidence that you shall give on this Tryal, to former Examinations which you have undergone?

Sir William Yonge. My Lords, I presume, without troubling your Lordships with any Argument, that all that has been said by the worthy Manager who spoke last, to oppose the former Question, is much more applicable to the Question now proposed to be asked; and therefore, without adding any thing more, why this Question should not be asked, I shall submit it to your Lordships; and humbly apprehend, it is our Duty to oppose the asking of this Question.

Lord High Steward. Gentlemen of the House of Commons, Do you oppose this last Question being asked?

Mr. Attorney General. I should beg, that the Question might be a little more fully explained; I do not remember to have ever heard the like.

Lord Talbot. My Lords, The Question to me seems extremely clear and plain; and I beg Leave to repeat it to your Lordships; and if you have any Difficulty about it, I will readily submit. My Lords, The Question is, Whether you (the Witness under Examination) believe your Life depends upon the Conformity of the Evidence you shall give upon this Tryal, to your former Examinations? I suppose the Gentleman was examined as well by the Managers for the House of Commons as their Clerk.

Lord Halifax. My Lords, All that the noble Lord who asked this Question, means by it, is comprehended in the former Question that he asked; and that is, whether the Witness is a voluntary Witness, or not?

Lord High Steward. The Witness said, He did not know what was meant by the Word *voluntary*; and desired it might be explained.

Lord Talbot. My Lords, I urged the other Question only as explanatory to that; and all that I meant by it, was to know, whether the Witness at the Bar is governed by Hope or Fear?

J. Murray. My Lords, If your Lordships please, I will answer the Question: I am upon my Oath, and obliged to tell the Truth; and I say, that possibly, and very probably, had I been in another Situation of Life, I should not have appeared before your Lordships as a Witness against the noble Lord at the Bar.

Lord Talbot. My Lords, I am extremely well satisfied with the Gentleman's Answer to the Question; and it gives me a much better Opinion of his Evidence than I had before.

Lord Barrington. My Lords, I beg Leave to ask this Witness a Question explanatory to the last Question. If you had a full Pardon, and was at this Bar, and was obliged to answer upon Oath, would you not have given the same Evidence that you now have given?

Lord Talbot. My Lords, I apprehend that is only asking the Witness, whether he would come here voluntarily, and perjure himself?

Lord Barrington. My Lords, The Question I proposed, is not, Whether the Witness would come voluntarily to this Bar? but whether, if he had a full Pardon, and was brought to this Bar (as every Man may, whether free or not free), if he had a free Pardon, and was compelled to give Evidence, whether he would give the same Evidence upon Oath as he has now given?

Lord Talbot. My Lords, This is a Question that no Man alive, in this Gentleman's Circumstances, can possibly answer.

J. Murray. My Lords, I beg Leave to answer the Question. If I was in such a Situation as has been now stated to your Lordships, and brought here with a Pardon in my Pocket, but brought here to give Evidence against the noble Lord at the Bar, I would not add to, or impair a Syllable of, or vary in the least from, what I have now said.

Lord High Steward. Is the Evidence you have here given upon your Oath, true?

J. Murray. Yes, it is.

Sir John Strange. My Lords, I beg Leave to ask this Gentleman a Question, relating to a Transaction which has been lately mentioned. He was asked, whether he did, or did not, surrender himself voluntarily to the King's Forces? His Answer was, That he could, he believes, have dispatched Two of the Dragoons, but that he did not make any Resistance. Now I desire he may acquaint your Lordships, whether that was, or was not, before the 12th Day of July last?

J. Murray. It was upon the 28th Day of June last.

Sir John Strange. My Lords, I desire to know, Whether or not, from that Time till now, he has not been in Custody, and amenable to Justice?

J. Murray. I have been in Custody ever since that Time.

Mr. Attorney General. My Lords, I desire to know, Whether he was then brought before any Judge or Justice of the Peace, and whom?

J. Murray. I was carried to my Lord Justice Clerk in *Edinburgh*, the Day I was taken into Custody.

Mr. Attorney General. Was you then committed, or no, by the Justice Clerk?

J. Murray. I was that Night committed, by the Justice Clerk, to the Castle of *Edinburgh*.

Mr. Attorney General. On the 28th of June?

J. Murray. Yes.

Mr. Attorney General. Did you continue in the Castle of *Edinburgh* from that time till you was sent for from thence to *London*?

J. Murray. I did continue there till I came to *London*.

Mr. Attorney General. Did you ever make, or endeavour to make, any Escape all that Time?

J. Murray. I never did.

A Lord. Did you, at any time since you have been in Custody, receive any Hopes or Promise of a Pardon?

J. Murray. I have never, since I have been in Custody, been promised a Pardon, nor have I heard a Word of Pardon mentioned to me since I was in Custody.

[Then the Witness, by the Direction of the Lord High Steward, withdrew.]

Sir Richard Lloyd. My Lords, The next Witness we beg Leave to produce, is *Hugh Fraser of Dumballoch*: Who was called in, and sworn.

Proclamation for Silence.

Sir Richard Lloyd. Do you know the noble Lord at the Bar?

H. Fraser. Yes; I do.

Sir Richard Lloyd. How long have you known him?

H. Fraser. I have known him many Years ago.

Sir Richard Lloyd. Do you remember whether you was sent for at any time, and when, to the House of my Lord *Loval*?

H. Fraser. I got a Message from *Peter Fraser of Belladrum*: It was he that brought me the Message.

Sir Richard Lloyd. From whom was that Message brought?

H. Fraser.

H. Frazer. From Lord *Lovat*, as he told me.

Sir Richard Lloyd. When was that?

H. Frazer. I think it was about the End of *September 1745*.

Sir Richard Lloyd. Was you sent for at any other time about this Part of the Year?

H. Frazer. I did not go upon the First Message.

Sir Richard Lloyd. Did you go upon the Second?

H. Frazer. Yes; I did.

Sir Richard Lloyd. What Distance of Time was there between the First and Second Message?

H. Frazer. I believe there might be a Day or Two: Thereabouts, to the best of my Memory.

Sir Richard Lloyd. When you came to my Lord *Lovat*'s House, pray what passed between my Lord *Lovat* and you?

H. Frazer. Upon my Word, I cannot remember particularly.

Sir Richard Lloyd. Do you remember whether any particular Paper was shewn you at that time, and what it was?

H. Frazer. No: I don't remember seeing any particular Paper at that time.

Sir Richard Lloyd. Was there any Paper read, or talked of, by any body at that time, relating to the Pretender's Son?

H. Frazer. There was a Conversation there about that time, and, to the best of my Remembrance, it was about the Troubles in the Country.

Sir Richard Lloyd. Did you ever see, or read, a Paper said to be a Manifesto from the Pretender's Son? Or, did you ever hear it read?

H. Frazer. Yes: I did.

Sir Richard Lloyd. Where did you hear it read?

H. Frazer. I read that Paper in a back Room at my Lord *Lovat*'s.

Sir Richard Lloyd. Who gave it you to read?

H. Frazer. I cannot remember who gave it me to read.

Sir Richard Lloyd. Do you remember who first shewed it you?

H. Frazer. My Lord *Lovat* directed some Person in the Room to give it me: Whether it was *Robert Frazer*, or not, I cannot say.

Sir Richard Lloyd. Do you remember to have heard my Lord *Lovat* say any thing of that Paper?

H. Frazer. I have heard him say it was a pretty well wrote Paper.

Sir Richard Lloyd. I beg you'll inform their Lordships, whether, at that time, you heard any Conversation about the Clan of the *Frasers*?

H. Frazer. Upon my Word, I cannot remember whether I did, or not, at that particular Time.

Sir Richard Lloyd. Did you, about that time, hear any thing about the Clan of the *Frasers*?

H. Frazer. I heard them spoken of several times.

Sir Richard Lloyd. Did you hear it spoken of, at any of those times, who was to command them?

H. Frazer. Yes: I heard, that the Master of *Lovat* was to command them.

Sir Richard Lloyd. Who did you hear say that?

H. Frazer. I heard my Lord *Lovat* say it.

Sir Richard Lloyd. To what Purpose did my Lord *Lovat* say he was to command them?

H. Frazer. It was to go South.

Sir Richard Lloyd. To join whom?

H. Frazer. To join the Pretender.

Sir Richard Lloyd. What did he call the Pretender? by what Name?

H. Frazer. He called him the Prince.

Sir Richard Lloyd. Were there any other of the Clans expected at that time to join the *Frasers* to march Southwards?

H. Frazer. I heard my Lord *Lovat* say, That he was uneasy about an Answer to a Letter, which he, or his Son, had wrote to the *Isle of Sky*.

Sir Richard Lloyd. From whom was that Answer expected?

H. Frazer. From the Laird of *MacLeod*.

Sir Richard Lloyd. Did you hear my Lord *Lovat* say what sort of Answer he expected, or hoped for?

H. Frazer. By all that I could learn of the Letter, it was a Letter desiring, that Laird *MacLeod*'s Men should come and join them.

Sir

Sir Richard Lloyd. A Letter from whom, desiring that *MacLeod's* Men might come and join them?

H. Frazer. I cannot be positive whether it was from my Lord *Lovat*, or his Son.

Sir Richard Lloyd. From whom did you learn the Contents of the Letter?

H. Frazer. I heard my Lord *Lovat* speak of it.

Sir Richard Lloyd. Was any Application made to you concerning the Raising of the Men, or their joining?

H. Frazer. My Lord *Lovat* asked me what Number of Men I could raise.

Sir Richard Lloyd. Of what Clan were you to raise them?

Sir William Yonge desired, that the last Question might be repeated: Which was done; and he made the same Answer as before.

Sir Richard Lloyd. What Men did he speak of? and what Clan?

H. Frazer. The *Frasers*: There are no other Men in that Part of the Country.

Sir Richard Lloyd. With what View were these Men to be raised?

H. Frazer. To join the rest of the Clan of the *Frasers*, which were to be commanded by the Master.

Sir Richard Lloyd. Did you tell my Lord *Lovat* what Number of Men you thought you could raise?

H. Frazer. No; upon my Word, I did not.

Sir Richard Lloyd. Did you hear my Lord *Lovat* say any thing about the raising his Clan, and who was to raise them, or did raise them?

H. Frazer. I heard my Lord *Lovat* say, That the Master was the Man that was to raise the Clan, and to head them.

Sir Richard Lloyd. Was he to do that by his own Power or Inclination, or by Advice from any body else?

H. Frazer. That is a Thing I can give but an Opinion upon.

Sir Richard Lloyd. What is your Opinion upon it?

H. Frazer. That the Master could not have raised the Men, except my Lord *Lovat* had countenanced the Thing, and it had been done by his Permission.

Sir Richard Lloyd. Have you heard my Lord *Lovat* say any thing in regard to his Son's being active, or not, in raising the Men?

H. Frazer. I have heard my Lord *Lovat* say more than once, That his Son was very slow in Raising of the Men.

Sir Richard Lloyd. And did he say so as praising him for his Slowness in raising the Men, or as in dispraising him?

H. Frazer. I thought it was to dispraise it.

Sir Richard Lloyd. Did you hear my Lord *Lovat* say any thing of his own Abilities or Inabilities to raise Men, and head them?

H. Frazer. I have heard my Lord *Lovat* say, That he was a tender, infirm Man, and not able to go about those Things himself.

Sir Richard Lloyd. Have you heard him wish himself younger?

H. Frazer. I have heard him say, He wished himself younger, that he might go and command the Men himself.

Sir Richard Lloyd. Command them in whose Service?

H. Frazer. In the Pretender's Service, that he was talking of.

Sir Richard Lloyd. Do you know what they mean by the Fire Cross in that Country?

H. Frazer. I remember the Fire Cross when it went about my Father's Ground. It was a long Pole, with Two cross Sticks burnt at the Fore-end; and the Design of it was to raise the Men, and to threaten them with Fire and Sword; that their Houses should be burnt, if they did not rise.

Sir Richard Lloyd. Was the Fire Cross carried through the Clan, that you know of, or have heard?

H. Frazer. I have heard, that it was carried through the Clan: I did not go about all the Country.

Sir Richard Lloyd. You say you saw it at your Father's?

H. Frazer. Yes; I did.

Sir Richard Lloyd. By whose Order is it that those Crosses are usually carried about to raise Men in the several Clans?

H. Frazer. Order is given by the Person that wants the Men.

Sir Richard Lloyd. Is it not always ordered by the Chief of the Clan? Does any body but the Chief of the Clan take upon them to order it?

H. Frazer.

H. Frazer. I am an intire Stranger to that : I never saw the Thing before.

Sir Richard Lloyd. When you were at Lord *Lovat's* House at the Time you speak of, did you observe any Tents there?

H. Frazer. Yes; I observed some Bell-Tents there.

Sir Richard Lloyd. What Number of them?

H. Frazer. I cannot be positive whether Two or Three.

Sir Richard Lloyd. Were they new or old ones?

H. Frazer. They were new: They seemed to me to be new.

Sir Richard Lloyd. What Arms were upon them?

H. Frazer. My Lord *Lovat's* Crest was upon them.

Sir Richard Lloyd. Did you see any Colours?

H. Frazer. I saw Colours at the House of *Castle-Downey*.

Sir Richard Lloyd. What Arms were upon them?

H. Frazer. There was upon one large Pair of Colours my Lord *Lovat's* Arms, to the best of my Memory.

Sir Richard Lloyd. Do you know if my Lord *Lovat* saw them?

H. Frazer. I can't tell.

Sir Richard Lloyd. Was any thing said to you, and by whom, to induce you to join the Pretender, more than you have given an Account of already?

H. Frazer. There were several Things dropped in Conversation; but it is such a Distance of Time, that I cannot remember what they were.

Sir Richard Lloyd. Was any Person present there, besides yourself and my Lord *Lovat*, when you was at his House?

H. Frazer. There were several Persons there.

Sir Richard Lloyd. Did any Conversation then pass, or not, about throwing off the Mask?

H. Frazer. Yes: Mr. *Alexander MacLeod*, and several others of the Country there, were speaking about the Pretender; and Mr. *Alexander MacLeod* said, That much depended upon my Lord *Lovat's* throwing off the Mask, or Words to that Purpose.

Sir Richard Lloyd. To whom did he say these Words?

H. Frazer. To my Lord *Lovat*.

Sir Richard Lloyd. What Answer did my Lord *Lovat* make to that?

H. Frazer. My Lord *Lovat* I saw take off his Hat, and put it upon the Ground, and heard him say, There it is then.

Sir Richard Lloyd. Do you remember any particular Healths that were drank then?

H. Frazer. I have heard the Prince's Health drank several times there, at the Table at *Castle-Downey*.

Sir Richard Lloyd. Was my Lord *Lovat* present, or not? Or did he drink it?

H. Frazer. My Lord *Lovat* was present at the Table.

Sir Richard Lloyd. Do you know of any Force that was made use of in that Clan to make them rise?

H. Frazer. I know there went Parties about.

Sir Richard Lloyd. Did you hear my Lord *Lovat* say any thing about his Expectation which Side would prevail?

H. Frazer. I heard my Lord *Lovat* say, He was sure the Prince would prevail.

Sir Richard Lloyd. Who did he mean? Who did he call the Prince? Who was he speaking of?

H. Frazer. Of the young Pretender.

Sir Richard Lloyd. Do you know of any Subsistence that was given by Lord *Lovat* to any body?

H. Frazer. I have heard my Lord *Lovat* say, That he had ordered his Factor to give an Allowance, monthly or weekly, to the Wives and Children of the Men.

Sir Richard Lloyd. Of whom?

H. Frazer. Of those that went with his Clan.

Sir Richard Lloyd. Upon what Occasion did they go?

H. Frazer. Those Men that were to go South with the young Pretender.

Sir Richard Lloyd. Was it all, or only those that were to be in his Clan?

H. Frazer. There were a great many in the Country, that, perhaps, had nothing to support their Families in their Absence, when they were gone South.

Sir Richard Lloyd. Do you know of any Letter that was shewn you from the young Pretender, dispensing with my Lord *Lovat's* personal Presence?

H. Frazer. Yes: I remember to have read the Letter.

Sir Richard Lloyd. Who gave it you to read?

H. Frazer. My Lord *Lovat*.

Sir Richard Lloyd. From whom was that Letter?

H. Frazer. He said it was from the Marquis of *Tullibardin*.

Sir Richard Lloyd. How was the Letter signed?

H. Frazer. The Letter was signed *Atbol*, in large Letters.

Sir Richard Lloyd. What were the Contents of it?

H. Frazer. I don't remember the particular Contents of it. To the best of my Memory, it appeared to be in Return to another Letter, which had been sent by my Lord *Lovat*; and it was to excuse his personal Attendance.

Sir Richard Lloyd. Whose personal Attendance?

H. Frazer. My Lord *Lovat*'s.

Sir Richard Lloyd. His Attendance where?

H. Frazer. To go South in the Pretender's Service.

Lord High Steward. Where is that Letter?

H. Frazer. I don't know.

Lord High Steward. You say my Lord *Lovat* gave it you?

H. Frazer. Yes.

Lord High Steward. What did you do it with it?

H. Frazer. I returned it again.

Lord High Steward. To whom did you return it?

H. Frazer. To my Lord *Lovat*, or his Secretary; I don't know which.

Sir Richard Lloyd. Do you know whether there was any Reward given to the Clans, when they were raised, for their Subsistence?

H. Frazer. I know there was Meal, Cows, and Mutton, given them.

Sir Richard Lloyd. For what was it given them?

H. Frazer. To maintain those Men.

Sir Richard Lloyd. Where were they then?

H. Frazer. There were several of them about *Castle-Downey*.

Sir Richard Lloyd. By whose Order were those Things given?

H. Frazer. That I don't know, indeed.

Sir Richard Lloyd. Did you ever hear my Lord *Lovat* say any thing about their being maintained by his, or any body else's Order?

H. Frazer. I don't remember, indeed.

Mr. Noel. My Lords, The Witness has already told your Lordships what the noble Prisoner at the Bar declared about the Person's Success, whom he called the Prince: I beg he may inform your Lordships, whether my Lord *Lovat*, when he spoke about that Success, did, or did not, say any thing about his sending for Men, and for what Purpose?

H. Frazer. I don't remember what he said at that particular Time.

Mr. Noel. Do you at any other Time?

H. Frazer. Yes, indeed: I heard my Lord *Lovat* say, He would send his Son and Men.

Mr. Noel. For what?

H. Frazer. To serve the Prince.

Mr. Noel. Who did you understand he meant by the Prince?

H. Frazer. The Pretender's Son.

Mr. Noel. You mentioned the Particulars about pulling off the Mask: You said, That *Mr. Alexander MacLeod* said, That much depended on Lord *Lovat*'s throwing off the Mask; that my Lord *Lovat*, upon that, threw his Hat upon the Floor, and said, Then there it is: Pray what was the Subject-Matter of the Conversation, when that was done?

H. Frazer. The Subject-Matter of the Conversation was the young Pretender's Cause; and it was about that they were speaking at that time.

Mr. Attorney General. My Lords, The Managers have done with their Examination of this Witness.

Lord High Steward. My Lord *Lovat*, Has your Lordship any Questions to ask this Witness?

Lord Lovat. My Lords, There have been such Proceedings against me since I was ordered to be tried, as never were heard of in *Scotland*, or *England*.

Lord High Steward. In what respect does your Lordship mean?

Lord Lovat. I mean, that after I was brought up to be tried before your Lordships, the Impeachment had been read against me, my Answer put in to it, and the Commons had replied to it, and after I had Leave to summon Witnesses in my Defence, I had summoned a great many Witnesses out of *Scotland* to come here in my Defence, I did not imagine there would be the least Difficulty in their coming up: But, my Lords, I find there was a Person there,

there, who was a kind of a Deputy-Sheriff, but never was known as an Officer of Justice, went to several private Meetings, and endeavoured to prevent my Witnesses coming up.

Lord High Steward. My Lord *Lovat*, I would not interrupt you, if it were not for your own sake. If your Lordship has any Matter of Complaint, my Lords will be ready to hear you at a proper Time, upon a proper Application; but this is not a proper Time for such an Application. You have Counsel to advise you as to the proper Method and Time of doing it, with whom you must advise.

Lord Lovat. My Lords, I was going to object to this Witness before he was sworn, because he had been called in by that Deputy-Sheriff, who threatened the Men, if they offered to come up, to give Evidence for me; and some were put in Prison, and driven from their Houses, particularly those they thought would favour me, after I had your Lordships Order to summon my Witnesses; And therefore, I shall object to any Witness that shall come from that Little Court. I beg this Witness may be asked, whether he was examined at *Inverness* before he came here?

H. Frazer. Yes, I was.

Lord Lovat. My Lords, I thought, as I was to be judged in a Court of the Supreme Judicature, and was innocent, that I was safe in such Hands; but I cannot think myself safe, when such Officers as those shall manage the Witnesses, and threaten those who will not say as they say.

Lord High Steward. I have already told your Lordship, that if you have any Complaint to make, you must make it at a proper Time, and in a proper Manner; and my Lords will hear it. You may go on to ask this Witness any Questions, concerning any Practices that he knows of.

Lord Lovat. My Lords, I beg this Witness may be asked, if he was examined upon Oath, in *December* or *January* last? and by whom?

H. Frazer. Yes, I was examined at *Inverness* by one *Killravage*.

Lord Lovat. What is *Killravage*?

H. Frazer. He is a Gentleman that lives about Four Miles from *Inverness*.

Lord Lovat. What is he?

H. Frazer. He had Substitution from the Sheriff-Depute.

Lord Lovat. Did you see *Chevis* of *Murtoun*? What Part did he act there?

H. Frazer. This Gentleman had got a Copy of the Charge sent into the Country; and he came in Obedience to that Charge, among the rest.

Lord Lovat. What is a Charge?

H. Frazer. A Kind of Summons.

Lord Lovat. Was you threatened by any Person, to give Evidence against me? and by whom?

H. Frazer. I was not, indeed.

Lord Lovat. Was you promised any Favour, or Reward, for being Evidence against me?

H. Frazer. No, indeed.

Lord Lovat. By whom have you been maintained, since you came to *London*?

H. Frazer. I have been, since I came to *London*, in the Custody of a Messenger.

Lord Lovat. By whom was you maintained?

H. Frazer. I do not know at whose Expence it was: I have had Victuals and Drink, and a Bed; and never was asked for any thing.

Lord Lovat. Have you been in Custody by any Order, Force, or Compulsion?

H. Frazer. No, not at all: I have not been under any Order, Force, or Compulsion.

Lord Lovat. Since you have been at the House of the Messenger, have you been at Liberty to go where you pleased?

Hugh Frazer. I have gone abroad, walked in the Park, and about *Kensington*; and I go out at Night to take a Glass.

Lord Lovat. When you went out, did not a Messenger attend you?

H. Frazer. Yes, he went to take a Walk with me.

A Lord. When was it that you were at *Lord Lovat's* House, that he said he would send his Son and Clan into the Pretender's Service?

H. Frazer. I think it was the Beginning of *October* 1745; it was after the Rebellion broke out?

A Lord. Where was it? and what Persons were then present?

H. Frazer. It was in my *Lord Lovat's* Room, at *Castle-Downey*.

Sir John Strange. My Lords, I would beg Leave to ask this Witness one Question for Form-sake: Pray what County is *Castle-Downey* in?

H. Frazer. It is in the County of *Inverness*.

A Lord. Pray which of the Prisoner's Servants was present then?

H. Frazer.

- H. Frazer.* Upon my Word, I can't remember that.
- Lord Lovat.* Did you receive any Money, or were you promised any Money, for your Expences in coming to *London*, to be a Witness against me?
- H. Frazer.* There was Money given to bear our Expences.
- A Lord.* Pray, who was present, when my Lord *Lovat* said, that he would send his Son, with his Men, into the Pretender's Service?
- H. Frazer.* I think there were several present; but I cannot condescend upon whom they were.
- A Lord.* Name any one of them: Was *Alexander MacLeod* there?
- Hugh Frazer.* I don't remember.
- Lord High Steward.* My Lord *Lovat*, Have you any more Questions to ask this Witness?
- Lord Lovat.* Not till I make my Defence; and then I hope your Lordships will give me Liberty.
- Lord High Steward.* Does your Lordship mean, that when you come to your Defence, you would ask this Witness any Questions?
- Lord Lovat.* No, I don't mean that.
- Lord High Steward.* Your Lordship will be at Liberty to ask any other Witness what Questions you please.
- Mr. Solicitor General.* Was the Proposal of my Lord *Lovat*, to send his Son and Clan into the Pretender's Service, as you have mentioned, before or after the News of the Battle of *Preston-Pans* came into that Country?
- H. Frazer.* It was after.
- Mr. Solicitor General.* Did you observe any Difference, in the Behaviour of my Lord *Lovat*, in regard to his raising his Clan, or taking any Steps towards it, after the News of that Battle, from what his Behaviour was before?
- H. Frazer.* I did not see my Lord *Lovat* before the Battle of *Preston-Pans*.
- Mr. Solicitor General.* How long was it after the Battle of *Preston-Pans* that you saw him?
- H. Frazer.* I don't remember.
- Mr. Solicitor General.* Was it before the News came to *Castle-Downey*, of the Troops from *France* being landed?
- H. Frazer.* Upon my Word, I don't remember.
- [Then the Witnesses, by Order of the Lord High Steward, withdrew.]
- Lord Lovat.* My Lords, I beg your Lordships Leave to withdraw for a little Time.
- The Prisoner was carried from the Bar accordingly.*
- Serjeant at Arms.* Our Sovereign Lord the King strictly charges and commands all manner of Persons to be uncovered, on Pain of Imprisonment.
- In about a Quarter of an Hour, the Prisoner was again brought to the Bar.*
- Mr. Attorney General.* My Lords, The next Witness we shall beg Leave to produce, is *John Riddell*: Who was called in, and sworn.
- Lord High Steward.* My Lord *Lovat*, Have you any Objections against this Witness *John Riddell*?
- Lord Lovat.* No.
- Mr. Attorney General.* My Lords, I beg this Witness may give your Lordships an Account, whether he knows the noble Lord at the Bar?
- Riddell.* Yes, I do.
- Mr. Attorney General.* Do you remember, if you were at *Castle-Downey* soon after the Battle of *Preston-Pans*?
- Riddell.* Yes, I was.
- Mr. Attorney General.* Did you, before that time, see *Barisdale*, or any other Person, there?
- Riddell.* Yes.
- Mr. Attorney General.* Did he come there first by himself, or not?
- Riddell.* I saw *Kinloch Moidart* there.
- Mr. Attorney General.* At that time?
- Riddell.* I cannot remember whether it was the same time, or not.
- Mr. Attorney General.* How long was *Barisdale* there?

Riddell.

Riddell. Two Nights.

Mr. Attorney General. Did he bring any Horses with him ?

Riddell. Four Dragoon Horses.

Mr. Attorney General. Whose Arms were upon the Furniture ?

Riddell. The King's Arms were upon them, and R and G, or a G and an R.

Mr. Attorney General. Did you see any of the Clan of the *Frasers* there ?

Riddell. At the same time some of them were there.

Mr. Attorney General. Was my Lord *Lovat* there, at that time ?

Riddell. Yes.

Mr. Attorney General. Did you ever see any of the Chiefs of the Clans dine at my Lord *Lovat's* Table ?

Riddell. Yes.

Mr. Attorney General. Did you hear any Healths drank there ?

Riddell. Yes.

Mr. Attorney General. Whose Health did you hear drank ?

Riddell. Prince *Charles's* Health.

Mr. Attorney General. Was my Lord *Lovat* present at that time, or not ?

Riddell. Yes.

Mr. Attorney General. Did you ever hear my Lord *Lovat* drink any of those Healths ?

Riddell. I cannot say that ; I'm not sure, 'tis so long since.

Mr. Attorney General. Did you ever hear my Lord *Lovat* drink any other Healths, relating to the Rebel Army ?

Riddell. Never, to the best of my Knowledge.

Mr. Attorney General. Did you ever hear him say any thing, relating to his countenancing the Rebel Army ?

Riddell. No, I do not remember.

Mr. Attorney General. Pray give my Lords an Account, whether you ever saw any Meal delivered out at my Lord *Lovat's*.

Riddell. My Lord *Lovat* has given Precept for Meal several times.

Mr. Attorney General. What do you mean by Precepts ?

Riddell. Precepts for so much Oats for the Horses, or Meal.

Mr. Attorney General. Do you mean by that an Order ?

Riddell. Yes.

Mr. Attorney General. Pray, what was done with the Meal that was ordered to you ?

Riddell. I got a Precept for Two Bolls of Meal, in part of my Wages.

Mr. Attorney General. Do you know of any Precept that was given to *Thomas Fraser* ?

Riddell. Yes, for Four Bolls.

Mr. Attorney General. For what ?

Riddell. 'Tis more than I can tell.

Mr. Attorney General. Do you know any thing of Bell-Tents being made ?

Riddell. Yes, I saw them made.

Mr. Attorney General. Where were they made ?

Riddell. At *Castle-Downey*.

Mr. Attorney General. Was my Lord *Lovat* there ?

Riddell. Yes.

Mr. Attorney General. What were they made for ?

Riddell. I can't tell.

Mr. Attorney General. By whose Order were they made ?

Riddell. I can't tell.

Mr. Attorney General. What became of them ?

Riddell. I heard they were sent to *Perth*.

Mr. Attorney General. For whose Use ? for what Purpose were they sent there ?

Riddell. They went there with a Company of Men ; I don't know for whose Use they were.

Mr. Attorney General. Who were the Company of Men ?

Riddell. They were the *Frasers*.

Mr. Attorney General. What were they collected together for ?

Riddell. They marched Southward, with a Design to go to *Perth*, as I heard.

Mr. Attorney General. Whose People were at *Perth* then ?

Riddell. The Rebel Army.

Mr. Attorney General. Did they march to join them ?

Riddell. 'Tis more than I can tell.

Mr. Attorney General. Had you any Orders from my Lord *Lovat*, concerning the preparing yourself, and Horses, to go with my Lord *Lovat*, or his Son?

Riddell. Yes; he ordered me to get myself ready to go.

Mr. Attorney General. Where was you to go to?

Riddell. With the Master.

Mr. Attorney General. Did not my Lord *Lovat* tell you where he was to go to?

Riddell. No, he did not, to the best of my Knowledge.

Mr. Attorney General. Where did you understand he was to go to?

Riddell. To *Perth*.

Mr. Attorney General. For what Purpose?

Riddell. To join that Army.

Mr. Attorney General. What Army do you mean; the King's Army, or the Rebel Army?

Riddell. I can't tell that.

Mr. Attorney General. How did you understand it? As you was to go to *Perth*, don't you know what Army you was to join?

Riddell. There was no Army at *Perth* but the Rebel Army.

Mr. Attorney General. Do you remember any Number of Men passing by Lord *Lovat*'s House?

Riddell. Yes, very well.

Mr. Attorney General. Did you see my Lord *Cromertie*, or his Officers, there?

Riddell. Yes.

Mr. Attorney General. How long did they continue there?

Riddell. One Night.

Mr. Attorney General. What time of the Year was it?

Riddell. *Hallowmäss*, or thereabouts.

Mr. Attorney General. Did you hear my Lord *Lovat* say any thing to these Gentlemen, concerning his Men being, or not being ready?

Riddell. I did not hear from my Lord *Lovat*; I heard it from some of his Servants.

Mr. Attorney General. What did you hear?

Riddell. I heard the Servants say, that my Lord *Lovat* mentioned something about the Mens not being ready.

Mr. Attorney General. Did you hear my Lord *Lovat* say any thing about it in the Chamber?

Riddell. No; if it was spoken, it was in the *Erse* Language; and I did not understand it.

Mr. Attorney General. Was my Lord *Lovat* present in the House when Lord *Cromertie* was there?

Riddell. Yes.

Mr. Attorney General. Did you see them together at Table?

Riddell. Yes.

Mr. Attorney General. Did you hear any of the Conversation that passed betwixt them?

Riddell. No.

Mr. Attorney General. Did you hear nothing concerning the drinking of any Healths?

Riddell. No, not at that time I did not.

Mr. Attorney General. At what time did you hear it?

Riddell. A good while before.

Mr. Attorney General. What Healths were drank? and by whom?

Riddell. The Chieftains of the Clans drank Prince *Charles*'s Health.

Mr. Attorney General. Was my Lord *Lovat* present?

Riddell. Yes.

Mr. Attorney General. Did he contradict the Health?

Riddell. I did not hear he did.

Mr. Attorney General. Was you present, or near, when a Number of *Frasers* were drawn up?

Riddell. I saw 700 Men together once.

Mr. Attorney General. Where were they?

Riddell. In the *Aird*.

Mr. Attorney General. Is that Place near my Lord *Lovat*'s House?

Riddell. It is within Half a Mile.

Mr. Attorney General. Was my Lord *Lovat* there at that time?

Riddell. No, I never saw my Lord *Lovat* there.

Mr. Attorney General. Was he at home then?

Riddell. Yes.

Mr. Attorney General. By whom were they drawn up?

Riddell. By my Lord *Lovat*'s Chamberlain.

Mr.

- Mr. Attorney General.* Were there any Officers among them?
- Riddell.* Yes.
- Mr. Attorney General.* Where did the Officers lodge?
- Riddell.* They went through into the Country, to Farmers Houses, Change-Houses, and Ale-Houses.
- Mr. Attorney General.* Did any of them ever dine at my Lord Lovat's House?
- Riddell.* Sometimes they did.
- Mr. Attorney General.* Did they dine with my Lord Lovat himself?
- Riddell.* Yes.
- Mr. Attorney General.* Did he know, that there were 700 Men drawn up there, or near that Place?
- Riddell.* I cannot tell, whether he knew, that there were 700 of them; but believe he knew they were there.
- Mr. Attorney General.* Do you know what Kind of Mark they had upon their Bonnets?
- Riddell.* They had a Cockade, and Sprigs of Yew.
- Mr. Attorney General.* What Kind of Cockades had they?
- Riddell.* White Cockades.
- Mr. Attorney General.* Was not that the distinguishing Mark of the Rebel Army?
- Riddell.* Yes.
- Mr. Attorney General.* Did they make use of the Sprigs of Yew, as a distinguishing Mark?
- Riddell.* Yes.
- Mr. Attorney General.* Did you see any Companies of those Men there?
- Riddell.* Yes, Three or Four Companies.
- Mr. Attorney General.* Where did they march to?
- Riddell.* To the Southward.
- Mr. Attorney General.* Did you, at any time, see any of the Officers take Leave of my Lord Lovat?
- Riddell.* Yes, I did.
- Mr. Attorney General.* What passed upon that Occasion? Which way did they take Leave of one another?
- Riddell.* My Lord Lovat shook Hands with them, kissed them, and bid them Farewel.
- Mr. Attorney General.* Did my Lord Lovat wish them any thing?
- Riddell.* I cannot say I heard that.
- Mr. Attorney General.* Do you remember, that, at any time after, one *Frazer* of *Byerly* was with my Lord Lovat?
- Riddell.* Yes, that Man was always with my Lord Lovat.
- Mr. Attorney General.* Did you hear my Lord Lovat ask him any Questions about the Pretender's Son?
- Riddell.* No, I never did.
- Mr. Attorney General.* Recollect yourself, whether you did, or no?
- Riddell.* I cannot mind, indeed; if I did, it is out of my Memory.
- Mr. Attorney General.* Did you ever hear my Lord Lovat ask any other Person concerning the Pretender's Son?
- Riddell.* I heard my Lord Lovat once ask what sort of a Man he was.
- Mr. Attorney General.* Of whom did he ask that Question?
- Riddell.* Some of the Chieftains, some of them that had been at *Falkirk*; I do not know who they were.
- Mr. Attorney General.* Do you remember what Answer was given my Lord Lovat to that Question?
- Riddell.* I do not.
- Mr. Attorney General.* Do you remember, whether my Lord Lovat mentioned any thing to him concerning the Pretender's Son's Preservation?
- Riddell.* I do not.
- Duke of Bedford.* You say, that my Lord *Cromertie's* Men were at *Castle-Downey*, my Lord Lovat's House: Pray were they received there as Friends; or did they come there by Force?
- Riddell.* The Men did not come to *Castle-Downey*; only Lord *Cromertie*, his Son, and the Officers.
- Duke of Bedford.* Did they come there by Force; or were they received as Friends?
- Riddell.* They were in the House all Night.
- Duke of Bedford.* Were they entertained as Friends?
- Riddell.* I did not hear any thing to the contrary; they were lodged there all Night.

Mr. Attorney General. You say you heard my Lord *Lovat* ask, what sort of a Man the Pretender's Son was? Pray, when was it that he asked that?

Riddell. I cannot name the Time certainly.

Mr. Attorney General. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, The Gentlemen of the House of Commons have done with this Witness; will you ask him any Questions?

Lord Lovat. When was you brought to Town; and by whose Order was you sent to Town?

Riddell. I have been brought to Town since the 24th of *August*; and was sent up by the Judge-Advocate.

Lord Lovat. What is the Judge-Advocate's Name?

Riddell. *David Bruce.*

Lord Lovat. Was you examined at *Inverness*, after the Battle of *Culloden*? and by whom?

Riddell. I was examined by the Judge-Advocate, in the Duke of *Cumberland's* Lodgings.

Lord Lovat. When was you so examined?

Riddell. It was the 24th of *April* last.

Lord Lovat. Was you threatened by any Person to give Evidence against me? and by whom? And what was the Expression used on that Occasion?

Riddell. I was threatened to deliver up my Money, but not about my being an Evidence.

Lord Lovat. What were the Threatenings?

Riddell. That they would put me in Prison, and hang me next Morning.

Sir John Strange. My Lords, I would not interrupt the noble Lord at the Bar; but I would be glad to know who the Witness speaks of.

Riddell. After I was examined, they heard I had some Money: Brigadier *Mordaunt* demanded the Money; and *Mr. Bruce* threatened, that if I did not give up the Money to the Brigadier, I must go to Prison.

Lord Lovat. Was you a Servant of mine?

Riddell. I served you for Five Years.

Lord Lovat. In what Capacity?

Riddell. As a Groom.

Lord Lovat. Was you taken Prisoner?

Riddell. I delivered myself up to the Duke of *Cumberland*, at *Inverness*, Eight Days after the Battle of *Culloden*.

Lord Lovat. Who was it that threatened to hang you?

Riddell. The Judge-Advocate.

Lord Lovat. Did any Person come to you, since you came to *London*, with a pretended Letter, said to be signed by me?

Riddell. Yes; there was a Man, whose Name is *Lefly*, who came to see if I knew my Lord *Lovat's* Hand.

Lord Lovat. What was desired of you by that Person? And what Answer did you give him?

Riddell. I said, that I did not know, whether it was my Lord *Lovat's* Hand, or not; but that it did not look like it.

Sir William Yonge. My Lords, I beg to know of this Witness, whether he did, or did not, surrender himself a Prisoner to the Duke, at *Inverness*?

Riddell. Yes; I did: I delivered up myself to the Duke, to get a Pass to go to *Edinburgh*; but never was in the Rebellion in my Life.

Sir William Yonge. Did you come to *Inverness* on Horseback?

Riddell. Yes: There were Two of us.

Sir William Yonge. Whose Horses had you?

Riddell. My Lord *Lovat's*.

Sir William Yonge. You say there were Two of you; and that you were both on my Lord *Lovat's* Horses: and that you were threatened to have your Money taken from you?

Riddell. Yes.

Sir William Yonge. Pray how came you by that Money?

Riddell. By selling the Horses.

Sir William Yonge. Do you know, or was you informed of, the Contents of the Letter, which *Mr. Lefly* asked you, whether it was Lord *Lovat's* Hand?

Riddell. I never saw the Letter, but the Subscription; and he shewed me that, to see if I knew it?

Sir William Yonge. Did not *Lefly* inform you what were the Contents of the Letter?

Riddell. No: To the best of my Remembrance, he said it was signed by my Lord *Lovat* in 1738:

[Then the Witness, by Direction of the Lord High Steward, withdrew.
My

My Lords, The next Witness we beg Leave to produce is *William Walker*: Who was called in, and sworn.

Lord High Steward. My Lord *Lovat*, Has your Lordship any Objection to this Witness?

Lord Lovat. No; I have none.

Sir William Yonge. My Lords, I beg Leave to ask this Witness, If he lived in my Lord *Lovat's* Family? and how long?

Walker. Yes; for Three Years and an half.

Sir William Yonge. Do you remember any Persons coming to him after the Battle of *Preston-Pans*? and who were they?

Walker. Yes: There was *Alexander MacLeod*, and *MacDonald of Barisdale*.

Sir William Yonge. Was *Kinloch Moidart* there?

Walker. Yes.

Sir William Yonge. Was young *Glengary* there?

Walker. Yes: He was there one Day; I think, on a Sunday.

Sir William Yonge. Did they dine at my Lord *Lovat's* Table?

Walker. Yes; all except *Glengary*.

Sir William Yonge. Do you remember any Healths that were drank?

Walker. Yes: I heard *Barisdale* drink the young Pretender's Health.

Sir William Yonge. By what Name?

Walker. By the Name of the Prince.

Sir William Yonge. Was my Lord *Lovat* present then?

Walker. Yes.

Sir William Yonge. Do you know one *Thomas Frazer* a Baker?

Walker. Yes.

Sir William Yonge. During the Time that those Persons were at my Lord *Lovat's* House, did he give them any Advice? and what was it?

Walker. I never heard it: It was always in my Lord's Room; and I never went in, but at Dinner.

Sir William Yonge. Did you hear them say any thing about the young Pretender, and the Clan of the *Frasers*?

Walker. I heard my Lord *Lovat* say, That they must take care not to let the young Pretender run into an Engagement.

Sir William Yonge. Do you know *Thomas Frazer* the Baker?

Walker. Yes.

Sir William Yonge. Was he at my Lord *Lovat's* then?

Walker. He came to *Castle-Downey*, with some Colours they were to make at *Inverness*.

Sir William Yonge. What Colours were they?

Walker. Two Standard Colours, Four Bell-Tents, and Two painted Flags.

Sir William Yonge. What were they painted with?

Walker. My Lord *Lovat's* Arms were upon the Flags.

Sir William Yonge. What became of those Things?

Walker. *Cameron* sent them away, after my Lord *Lovat* was taken.

Sir William Yonge. Do you remember the Marching of Two Companies to *Perth*?

Walker. Yes.

Sir William Yonge. Do you remember soon after the Master of *Lovat's* coming into the Room where you was?

Walker. Yes.

Sir William Yonge. Was my Lord *Lovat* there?

Walker. Yes.

Sir William Yonge. What passed there between them?

Walker. When the Master came into the Room, my Lord *Lovat* was speaking to him: I don't know what it was about.

Sir William Yonge. What did the Master do then?

Walker. The Master rose up, and took his Bonnet, and threw it upon the Floor, and threw the White Cockade in the Fire, and damned the Cockade.

Sir William Yonge. What did the Father do upon that Occasion?

Walker. He rose up in a Passion, and said, What could he do! and was forcing his Son out.

Sir William Yonge. I beg you'll inform their Lordships, upon what Occasion it was that the Master of *Lovat* threw his Cockade into the Fire; and what his Father had said to him to occasion it?

Walker. I don't know that, indeed.

- Sir William Yonge.* Did you hear his Father say any thing to him ?
- Walker.* His Father spoke to him in *Erse*.
- Sir William Yonge.* Do you understand *Erse* ?
- Walker.* No ; I do not. The Master of *Lovat* went to the Door ; and Mr. *Frazer* the Minister stood up in the Master of *Lovat*'s Behalf : Upon which, Mr. *Frazer* of *Byerfield* rose up, and said, What have you to do with it ? You have no Estate to forfeit.
- Sir William Yonge.* What said my Lord *Lovat* upon that ?
- Walker.* I do not know what he said upon that.
- Sir William Yonge.* Did they say nothing in *English* after that ?
- Walker.* They spoke in a Language I did not understand.
- Sir William Yonge.* Did my Lord *Lovat* say nothing in *English* ?
- Walker.* Not that I know of : Only he said, What could he do more ! He was forcing his Son out, the very Life of him.
- Sir William Yonge.* Pray do you know upon what Account that was said ?
- Walker.* It was an Answer he gave to *Byerfield*.
- Sir William Yonge.* To whom did *Byerfield* speak, when he said, He had no Estate to forfeit ?
- Walker.* To *Donald Frazer* the Minister.
- Sir William Yonge.* Do you remember any thing about a Smith and a Tinker repairing any Arms ?
- Walker.* Yes : There was one *Hugh Monro*, and another.
- Sir William Yonge.* How long was it that they were at *Castle-Downey* ?
- Walker.* About a Fortnight, I think.
- Sir William Yonge.* Were there any Arms where they were ?
- Walker.* Yes ; in the Ward-Room
- Sir William Yonge.* Where was the Key kept of that Room ?
- Walker.* The Key was very often in my Lord *Lovat*'s Room, in his Custody.
- Sir William Yonge.* Did my Lord *Lovat* usually give out that Key to any body that went into the Ward-Room ? Or did he use to go there himself ?
- Walker.* My Lord always gave the Key out to any body that wanted it, to get Shoes for the Horses, or the like : My Lord never went there himself.
- Sir William Yonge.* Do you know any thing of the Smith and the Tinker's going into my Lord's Room ?
- Walker.* Yes.
- Sir William Yonge.* What passed there ? Did my Lord give them any thing ?
- Walker.* A Dram.
- Sir William Yonge.* Have you ever been in the Ward-Room ?
- Walker.* Yes.
- Sir William Yonge.* What was usually kept there ?
- Walker.* Several Sorts of Things ; 'tis more than I can tell how many.
- Sir William Yonge.* Did you see any Number of Men rendezvoused in that Neighbourhood ?
- Walker.* Yes.
- Sir William Yonge.* What Number ? How many Companies did you see ?
- Walker.* I don't know how many Companies ; the First of the Rendezvous, we reckoned there were 7 or 800 Men.
- Sir William Yonge.* Were they armed ?
- Walker.* Some of them were armed, and some not.
- Sir William Yonge.* How far from *Castle-Downey* did you see those Men ?
- Walker.* About a Mile from it.
- Sir William Yonge.* Did you ever see them afterwards ?
- Walker.* Yes ; I saw a Company of them drawn up on the Green.
- Sir William Yonge.* Was my Lord *Lovat* at home then ? Did he see them drawn up ?
- Walker.* He was at home ; but I believe did not see them.
- Sir William Yonge.* How near is that Green to my Lord *Lovat*'s House ?
- Walker.* About 100 or 200 Yards.
- Sir William Yonge.* Do you know of any Violence, or Force, that was used to make the Men rise ?
- Walker.* The Chamberlain forced them, and young *Inverallachy*.
- Sir William Yonge.* In what Manner did they force them ?
- Walker.* They threatened to burn their Houses, after the Battle of *Culloden*, if they did not rise.
- Sir William Yonge.* But, before that, how did they threaten them ?
- Walker.* That they would take their Cattle and *Plaids* from them, if they did not rise. Lord *Lovat* was then a Prisoner to my Lord *Loudon*, and was then in his Custody.

Sir William Yonge. Do you remember when my Lord *Cromertie* marched by my Lord *Lovat's*?

Walker. Yes.

Sir William Yonge. Was Lord *Cromertie*, or his Son, or any of the Officers, at my Lord *Lovat's*?

Walker. Yes: my Lord *Cromertie* and Lord *MacLeod* were there all Night.

Sir William Yonge. Did you hear my Lord *Lovat* make use of any Expressions, or Excuse, that his Men were not ready?

Walker. My Lord *Lovat* said, It was a Shame to see Lord *Cromertie's* Men go by his Nose: But what it was for, I can't tell.

Sir William Yonge. My Lords, We have done with our Examination of this Witness.

Lord High Steward. My Lord *Lovat*, Would your Lordship ask this Witness any Questions?

Lord Lovat. Was you threatened by any one to give Evidence against me? and by whom? And what were the Expressions used on that Occasion?

Walker. No, I was not.

Lord Lovat. Was you examined at *Inverness*? and by whom?

Walker. I was examined at *Inverness* by Mr. *Bruce* and Brigadier *Mordaunt*.

Lord Lovat. What passed between you and Mr. *Bruce*?

Walker. I was examined: Nothing passed between me and Mr. *Bruce*, at that time.

Lord Lovat. Or at any time afterwards?

Walker. Nor afterwards.

Lord Lovat. Was any Force used to get out the Men, while I was a Prisoner, or while I was at home, or after my Return from *Inverness*?

Lord High Steward. First, Was there any Force used to get out the Men, while my Lord *Lovat* was at home?

Walker. I cannot truly tell that: It is more than I can tell.

Lord High Steward. Was any such Force used while he was a Prisoner at *Inverness*?

Walker. Lord *Lovat* was with Lord *Loudon* when the Force was used to raise the Men.

Lord High Steward. Did you say, that the Dispute between Lord *Lovat* and his Son happened after the *Frasers* had marched Southwards? or not?

Walker. It was the *Frasers* of *Stratharick* that had marched; there was not a Man marched out of the *Aird* at that time.

Lord Lovat. Did I know of the marching of the Men?

Walker. My Lord *Lovat* knew nothing of it: It was *Frazer* of *Byerfield* that took as many of the *Frasers* as he could get to the Castle of *Culloden*, in order to take the Lord President Prisoner: But my Lord *Lovat* knew nothing of that; for when he heard of it, he was like to go mad; he cursed for a matter of two Hours; and we had no Peace with him.

Lord Lovat. Was that the Occasion of my Quarrel with my Son?

Walker. No; my Lord *Lovat*, nor the Master of *Lovat*, knew nothing of it; for this *Byerfield*, as I heard, was designed to raise the Men, without my Lord *Lovat's* Authority; and, if he had got the Command of the House of *Culloden*, he would have kept them there: It was he that marched with the *Stratharick* Men to *Perth*.

A Lord. Did my Lord *Lovat*, or his Son, know nothing of this?

Walker. No; they were Twenty-four Miles off.

A Lord. What was the Occasion of the Quarrel between Lord *Lovat* and his Son?

Walker. I cannot tell.

A Lord. Was you present in the Room, when the Dispute began between my Lord *Lovat* and his Son?

Walker. No; I was not in the Room: I came in with a Dish in the mean time; and there was this little *John Frazer* of *Byerfield* speaking to my Lord: My Lord *Lovat* fell foul of the Master, who rose up, and took his Cockade off the 'Scriptore, and threw the Cockade into the Fire, and damned it.

A Lord. What Language did they talk in?

Walker. They talked in *Erse*, when I heard it first.

A Lord. You say, that *Frazer* the Minister took part with the Master?

Walker. Yes.

A Lord. Did he talk in *Erse*?

Walker. Yes.

A Lord. Then how do you know he spoke in favour of the Master?

Walker. The Reason why I knew it was, that little *John Frazer* flew up to *Donald Frazer*, and said, He had no Estate to forfeit; and that, if he had got a Stipend, it was all he had to take care of.

Lord

Lord Lovat. Do you know whether I used my Endeavours to get my Men home after they were taken out by *Frazer* of *Byerfield*, or any other Person?

Walker. *MacDonald* of *Barisdale* would have my Lord *Lovat's* Men out, and was never away from the House; and there came on a great Snow, that my Lord *Lovat's* Men did not go out at that time; but about Two Days after that, some of them went up to a Hill with *Barisdale's* Men; and they would take Cattle, to maintain them upon the Road: When my Lord *Lovat* sent for them from *Urquhart*, and brought them all back again. When there was any of them risen at all, then my Lord was Prisoner with Lord *Loudon*.

A Lord. Pray what kind of Servant is a Chamberlain?

Walker. The Steward who gathers in the Rents.

A Lord. Did you ever hear of the Crofs being carried about the Country?

Walker. I never either saw it, or heard of it.

Lord Lovat. Do you know, whether *Frazer* of *Dumballoch*, that was here To-day, went out in Arms, at the Head of a Company, to *Urquhart*, till I brought him home?

Walker. I saw him that Day at Lord *Lovat's* Table; but whether he got to *Urquhart*, or no, I cannot tell.

A Lord. Did the Men that went to *Urquhart* dine with my Lord *Lovat*?

Walker. Yes.

[Then the Witnesses, by the Direction of the Lord High Steward, withdrew.

Mr. Yorke. My Lords, The next Witness we shall produce, is *Hugh Monro*.

Hugh Monro called in.

Lord High Steward. My Lord *Lovat*, Has your Lordship any Objection against *Hugh Monro's* being examined as a Witness?

Lord Lovat. Yes; he is my Tenant.

Lord High Steward. Would your Lordship have him examined upon that Point?

Lord Lovat. Yes.

The Witness was sworn upon a Voire dire.

Lord High Steward. My Lord *Lovat*, What Questions would you ask him?

Lord Lovat. Have you any Lands, Houses, or Yard, that you hold of me?

Monro. Yes.

Lord High Steward. What Lands do you hold of my Lord *Lovat*?

Monro. Six Bolls a Year.

Lord High Steward. How do you hold it of my Lord *Lovat*, as Vassal, or by Lease or Tack?

Monro. While I was a Servant, I had it from him.

Lord High Steward. Do you hold it of my Lord *Lovat* now?

Monro. Another Man hath taken Possession there.

Lord High Steward. Have you the same Tenure under my Lord *Lovat* as you had before?

Monro. Yes.

Mr. Attorney General. My Lords, I beg this Witness may be asked, If he holds any Lands of my Lord *Lovat* at this time.

Monro. I have the same Land that I had before; but another Man hath it in Possession ever since *Whitsunday*.

Mr. Attorney General. What is that other Man's Name?

Monro. *Kilbocky*.

Mr. Attorney General. How does he hold it of my Lord?

Monro. I don't know.

Lord Lovat. Do you think you have any Right to hold this Land, tho' another Man is in Possession of it?

Monro. No, I have no Right to hold it.

Lord Sandys. Why do you say you have no Right to hold it?

Monro. Because the Superior Lord may turn me out of the Land at any time.

Lord Sandys. Has the Superior Lord turned you out of the Land?

Monro. No.

Lord High Steward. Who do you take to be your Superior Lord?

Monro. My Lord *Lovat*.

Sir William Yonge. Had you any Wages from my Lord *Lovat*, while you was his Servant?

Monro. Yes; I had.
Sir William Yonge. What were the Wages you had?
Monro. Five Pounds a Year.
Sir William Yonge. Was it paid in Money, or in Lands of any Rent?
Monro. It was paid in Land.
Sir William Yonge. Was that the Land you now speak of what you hold of my Lord Lovat?
Monro. Yes.
Sir William Yonge. Have you any Title to that Land, now you are not his Servant?
Monro. I don't know what Way it is.
Sir William Yonge. Do you think you have any Claim to the Land, now you are not his Servant?
Monro. No; I have none.
Sir William Yonge. How long have you left my Lord Lovat's Service?
Monro. I was always his Servant: I did not leave his Service.
Lord Lovat. The Person that now is in Possession of that Land, has he it by my Consent?
Monro. I don't know: The Man that is in Possession says he must have the Rent this Year.
Mr. Attorney General. Did you ever hold this Land by any Writing?
Monro. No.
Mr. Attorney General. Did you ever hold it by any Contract for any certain Term?
Monro. I had the Land from my Lord Lovat, for what I worked for him in the Year.
Lord Lovat. Was you turned out of this Land by Force, or against your Will?
Monro. No; I was not.
A Lord. By what Means was you dispossessed of this Land?
Monro. I have the same Land yet.
Mr. Grenville. In what Capacity was you a Servant to my Lord Lovat?
Monro. I was his Blacksmith.
Mr. Grenville. Do you know the Person, who, you say, is now in Possession of that Land?
Monro. Indeed do I.
Mr. Grenville. What is he? Is he a Servant to my Lord Lovat?
Monro. No: He is a Gentleman.
Lord Halifax. My Lords, I submit it to your Lordships, as this Witness has already contradicted himself several times, whether he should not be ordered to withdraw.
Sir John Strange. I stood up to acquaint your Lordships, that we should not insist on the Examination of this Witness; but desire it may be understood, that we only do that from the Manner of his answering the Questions which have been asked him; and do not thereby submit to the Objection that has been made against him by the noble Lord at the Bar.
[Then the Witnesses, by Direction of the Lord High Steward, withdrew.]

The Duke of Newcastle moved to adjourn to the Chamber of Parliament.

Lord Lovat. My Lords, I have most humbly represented to your Lordships every Day of my Tryal, that I am so weak and feeble, that I am not able to attend your Lordships. I fainted away thrice this Morning, before I came up to your Lordships Bar; but yet was determined to shew my Respect to your Lordships, or die upon the Road. My Lords, it is impossible for me to come up in the Manner I have done for these Three Days past. I am every Day obliged to get up by Three or Four o'Clock in the Morning; and therefore I beg your Lordships to have Compassion on me, and to give me a later Hour, and a Days Respite, that I may try to recover myself.

The Lord High Steward went back to his Chair: And then the House adjourned to the Chamber of Parliament; and the Lords, and others, returned in the same Order as before.

The House being there resumed,

Ordered, That this House will proceed further in the Tryal of *Simon Lord Lovat* in *Westminster-Hall*, on *Friday* next, at Eleven of the Clock in the Forenoon.

A Message was sent to the House of Commons, by *Mr. Eld* and *Mr. Thurston*, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do take back the said *Lord Lovat*, and bring him again to the Bar of this House in *Westminster-Hall*, on *Friday* next, at Eleven of the Clock in the Forenoon.

Friday the 13th Day of March, 1746.

The FOURTH DAY.

ABOUT Eleven of the Clock in the Forenoon, the Lords, and others, came from the Chamber of Parliament, in the same Order as on Monday last, into Westminster-Hall: Where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court; and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes, Lieutenant of the Tower of London, Bring forth your Prisoner, Simon Lord Lovat, to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy-Governor of the Tower brought the Prisoner to the Bar, in the like Form as before. And then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Lord High Steward desired Leave to go down to the Table: And went down accordingly.

Lord High Steward. Gentlemen of the House of Commons, You may proceed.

Mr. Yorke. My Lords, The next Witness we shall produce to your Lordships is Thomas Frazer.

Thomas Frazer called into Court.

Mr. Yorke. My Lords, We desire this Witness Thomas Frazer may be sworn.

Lord High Steward. My Lord Lovat, Has your Lordship any Objection against Thomas Frazer being sworn as a Witness?

Lord Lovat. My Lords, I have no Objection to him; but, my Lords, I am not able to rise up, and sit down, having been ill all Night, and am very ill now. I hope your Lordships will excuse my rising up and down.

Thomas Frazer sworn.

Mr. Yorke. My Lords, I would ask this Witness, If he knows my Lord Lovat? And I desire he would speak out.

T. Frazer. Yes, my Lords, as well as I do myself.

Mr. Yorke. How long have you known him?

T. Frazer. Ever since I was a Child.

Mr. Yorke. Have you been employed to work for my Lord Lovat at any time about September 1745; and upon what Occasion was you so employed? Answer the Question distinctly.

T. Frazer. No; I never was employed by him.

Mr. Yorke. Was you employed at Castle-Downey about that time?

T. Frazer. Yes; I was at Castle-Downey; and was employed by my Lord's Chamberlain.

Mr. Yorke. About what Business?

T. Frazer. About mending some old Colours.

Mr. Yorke. And what else was you employed in?

T. Frazer. About some Camp-Colours.

Mr. Yorke. Was you employed in any thing else?

T. Frazer. Yes: There were some Bells for Arms, that I was employed about.

Mr. Yorke. Who gave you Directions about making these Things?

T. Frazer. John Frazer, my Lord Lovat's Chamberlain or Steward; and he paid me for my Pains when I had done.

Mr. Yorke. At what House was this Work done?

T. Frazer. Most of it was done at my own House at Inverness.

Mr. Yorke. Was none of the Work done at *Castle-Downey*?

T. Frazer. There was a Camp-Colour, and some other Things, done at *Castle-Downey*.

Mr. Yorke. Whose Arms were put upon these Colours, or Bells for Arms?

T. Frazer. There was no Arms upon them, but the Crest of Lord *Lovat's* Family, the Deer's Head.

Mr. Yorke. Was that Crest put both upon the Bell-Tents and Colours?

T. Frazer. It was upon the Camp-Colours, and Bells of Arms.

Mr. Yorke. Were the Arms upon the Colours?

T. Frazer. They were a Stand of old Colours that were done by *Frazer*.

Mr. Yorke. Where were these Colours set up afterwards? Or, were they set up at all?

T. Frazer. Yes: I stuck them up on the Green of *Castle-Downey*.

Mr. Yorke. Did my Lord *Lovat* ever see them there?

T. Frazer. To my Knowledge, he never did.

Mr. Yorke. What were those Bell-Tents and Colours, which you painted, intended for? What was to be the Use of them?

T. Frazer. I cannot tell that, upon my Faith.

Mr. Yorke. Did my Lord *Lovat* know of your being employed about these Things?

T. Frazer. No; he did not, to my Knowledge, as I shall answer.

Mr. Yorke. Who paid you for them?

T. Frazer. The Chamberlain, or Steward.

Mr. Yorke. Do you think the Chamberlain would have paid you for them, without my Lord *Lovat's* Order?

T. Frazer. I can't tell that: Let the Judges determine that.

Mr. Yorke. Pray who used to pay you for Work that you had done for my Lord *Lovat* before that?

T. Frazer. The Chamberlain.

Mr. Yorke. Was my Lord *Lovat* in the House at the same time?

T. Frazer. Yes; he was in the House: He was very sick.

Mr. Yorke. Did you observe my Lord *Lovat* ever look at these Colours that you set up?

T. Frazer. I saw him one fair Morning take a Walk upon the Green, and take an old Colour in his Hand.

Mr. Yorke. Did he see there the Colours which you set up?

T. Frazer. Yes; the Bells of Arms and Colours.

Mr. Yorke. Did he say any thing to you about them?

T. Frazer. Yes: He seemed to be very ill pleased.

Mr. Yorke. What was he ill pleased with?

T. Frazer. I don't know whether it was with the Manner of doing the Work, or because it was done at all.

Mr. Yorke. When his Lordship expressed himself ill pleased, did he direct you to take them away, or not?

T. Frazer. No: They were to stay there till they were dried by the Wind.

Mr. Yorke. When he expressed himself to be ill pleased, did he order them to be taken away?

T. Frazer. He did not speak a Word to me afterwards about them.

Mr. Yorke. Do you know what became of those Colours?

T. Frazer. No: I went home to *Inverness*, which is the Place of my Residence: But, when I am employed by any Man, I must answer and obey.

Mr. Yorke. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Will your Lordship ask this Witness any Questions?

Lord Lovat. No, my Lords.

[Then the Witnesses, by Direction of the Lord High Steward, withdrew.]

Mr. Attorney General. My Lords, The next Witness we shall produce is *Hugh Frazer*, who was Secretary to my Lord *Lovat* from 1741 to 1744, when *Robert Frazer*, who was before examined, became Secretary in his room.

Hugh Frazer was called in.

Lord High Steward. My Lord *Lovat*, Have you any Objection to this Witness?

Lord Lovat. No, my Lords.

Lord Halifax. My Lords, As the noble Lord at the Bar has complained, that he is sick and faint, I move, That your Lordships may dispense with his rising up.

Lords. Ay, Ay.

Hugh

Hugh Frazer sworn.

Mr. Attorney General. Do you know the noble Lord at the Bar?

H. Frazer. Yes.

Mr. Attorney General. How long have you known him? And raise your Voice.

H. Frazer. I've known my Lord Lovat for about Five Years.

Mr. Attorney General. Did you ever serve my Lord Lovat? and in what Capacity?

Lord High Steward. Raise your Voice, Mr. Frazer.

Mr. Attorney General. In what Capacity did you serve Lord Lovat?

H. Frazer. I served my Lord Lovat in the Capacity of a Secretary.

Mr. Attorney General. When did you first come into his Service? and when did you quit it?

H. Frazer. I came into Lord Lovat's Service in April or May 1741, and left it towards the End of December 1744.

Mr. Attorney General. Give an Account to my Lords, whether you was at Edinburgh in the Month of September 1745?

H. Frazer. I was.

Mr. Attorney General. Do you know one William Frazer of Belnain? Was he then at Edinburgh?

H. Frazer. Yes.

Mr. Attorney General. Had you and he any, and what, Conversation together? And did you come to any Resolution upon it, in order to your going to my Lord Lovat's?

H. Frazer. I had a Conversation with Mr. Frazer.

Mr. Attorney General. Did you Two come to any Resolution together concerning your going to my Lord Lovat's, in relation to his Son the Master of Lovat?

H. Frazer. We did.

Mr. Attorney General. Please to tell my Lords what that Resolution or Agreement between you was?

H. Frazer. The Resolution between Mr. Frazer and me was this, That, as there had, at that time, a Rebellion broke out in the North of Scotland, it was agreed between us to be proper, that I should go into the North Country, in order to converse with my Lord Lovat upon the Subject of his Son's going out of Scotland, to avoid any Censure, or wrong Interpretation, that might be put upon his Conduct, as he was then in that Country.

Mr. Attorney General. Had you and this Frazer, at that time, any Apprehensions that he might be prevailed upon to go into the Rebellion?

H. Frazer. We had no Grounds for any Apprehensions, further than the spreading Contagion there was at that time.

Mr. Attorney General. Was there any Proposals made by William Frazer, or you, to prevent his being infected with that Contagion?

H. Frazer. The Proposal made by Mr. Frazer, and agreed to by me, was, that he should be removed, and go abroad.

Mr. Attorney General. Did you, or did you not, propose that he should go abroad?

H. Frazer. The Thing was unanimous: I don't know which of us proposed it.

Mr. Attorney General. To what Place was he to go?

H. Frazer. We intended that he should go to Leiden.

Mr. Attorney General. At whose Expence was he to go to Leiden?

H. Frazer. The Expence in the End was to fall on my Lord Lovat; but it was to be defrayed by Mr. Frazer for a Year, to be advanced by him.

Mr. Attorney General. What was agreed upon, with respect to making any Proposals of this Kind to my Lord Lovat?

H. Frazer. It was agreed, That it should be proposed to my Lord Lovat, and his Son; and was not to be done without my Lord's Consent.

Mr. Attorney General. Was it agreed upon, that you should go to my Lord Lovat upon this Proposal?

H. Frazer. Yes; it was.

Mr. Attorney General. And did you go to him?

H. Frazer. Yes.

Mr. Attorney General. And did you deliver the Message to him?

H. Frazer. I did.

Mr. Attorney General. And what Answer did he give you?

H. Frazer. He approved very much of the Proposal, and agreed to the Thing.

Mr. Attorney General. How long did he continue in that Agreement to this Proposal?

H. Frazer.

H. Frazer. Some Days after, he said, He did not think it quite so convenient a Thing ; and that he had altered his Mind in regard to That.

Mr. Attorney General. Pray did he say any thing concerning his Intention about the Master his Son's going into the Rebellion ?

H. Frazer. He communicated his Design to me, when he talked to me on the Subject ; which was, that the Master should.

Mr. Attorney General. Should do what ?

H. Frazer. Should go into the Rebellion ; that is, to head the Clan of the *Frasers*.

Mr. Attorney General. Did you hear my Lord *Lovat* say any thing, or no, concerning his own Intentions originally to head the Clan in the Rebellion.

H. Frazer. My Lord *Lovat* told me then, That he had intended to head them himself ; but that he had altered his Resolution.

Mr. Attorney General. For what Purpose, or with what View, did he alter his Resolution ?

H. Frazer. In order to stay himself at home, I suppose.

Mr. Attorney General. And who was intended to go in his room ?

H. Frazer. I said before, That the Master was to head the *Frasers*.

Mr. Attorney General. Did you mean, that by saying he altered his Resolution, that he had resolved the Master should go ?

H. Frazer. Yes.

Mr. Attorney General. Did you hear my Lord *Lovat* say any thing concerning the Number of Men that, he had thought, might have been raised, or that would rise ?

H. Frazer. My Lord *Lovat* did talk to me of a greater Number of Men he thought might be raised, than was likely to rise.

Mr. Attorney General. What Number did he mention ?

H. Frazer. If I remember right, he talked of Four or Five thousand.

Mr. Attorney General. Did he give any Reason, in relation to his Resolution, concerning the Master's going out, instead of himself ?

H. Frazer. He told me, That he had once intended to have headed them himself, in Expectation that there would be a Rising of Four or Five thousand Men ; but, as that was not then likely to happen, he intended, that the Master of *Lovat* should go with the Clan, to head them.

Mr. Attorney General. Please to give an Account to my Lords, If, he at that time, told you of any Disappointment he met with from other People ?

H. Frazer. He talked in general, That some People had not acted up to their Engagements, or to that Purpose.

Mr. Attorney General. Please to give an Account to my Lords, If you remember the Time when the Battle of *Preston-Pans* happened ?

H. Frazer. Yes : I remember the Time very well.

Mr. Attorney General. Was you at *Castle-Downey* after, or before that ?

H. Frazer. After that Battle.

Mr. Attorney General. How long were you there after that Battle ?

H. Frazer. It may be about Eight Days after.

Mr. Attorney General. Did any body come to *Castle-Downey* when you was there, and give an Account to my Lord *Lovat* of that Battle ? and who was it ?

H. Frazer. There were several Gentlemen came to *Castle-Downey* while I was there ; who said, They had been in that Action.

Mr. Attorney General. What did they say concerning it ?

H. Frazer. What they said of it was, giving a History of the Matter of Fact.

Mr. Attorney General. Who did they give the History to ?

H. Frazer. To the Company, where I was present : I don't know to whom in particular.

Mr. Attorney General. Was Lord *Lovat* present at any Conversation of that Kind ?

H. Frazer. I do not doubt but he was.

Mr. Attorney General. Do you remember whether he was, or not ?

H. Frazer. I believe he was.

Mr. Attorney General. Did you hear Lord *Lovat* say any thing, and what, concerning that Battle ?

H. Frazer. I remember to have heard my Lord *Lovat* say, That it was a Victory obtained, not to be paralleled in History.

Mr. Attorney General. I beg you will give an Account to their Lordships, Who the Persons were that came to my Lord *Lovat*'s with this Account of the Battle ? Please to name them.

H. Frazer. That they came with an Account of the Battle, is more than I can say.

Mr. Attorney General. Who were the Persons that told it ? And who were there ?

E c

H. Frazer.

H. Frazer. *MacDonald of Barisdale* was there.

Mr. Attorney General. Was any other Person there?

H. Frazer. There were with him Servants, and one Gentleman, I think, that was in Company.

Mr. Attorney General. Was young *Glengarie* there?

H. Frazer. Yes: The Son of *Glengarie* was there.

Mr. Attorney General. Were *Barisdale* and *Glengarie* in the Rebellion, or no?

H. Frazer. So they said themselves.

Mr. Attorney General. Are these the Persons that said they had been in the Battle?

H. Frazer. They said they had been there; and gave an Account of their own Conduct in it.

Mr. Attorney General. What did they say they came Northward for?

H. Frazer. That they told their real Business, I cannot affirm. What they gave out was, That they intended to levy more Men, in order to prosecute the Affair they had undertaken.

Mr. Attorney General. What Affair do you understand that to have been?

H. Frazer. The Rebellion, sure enough.

Mr. Attorney General. Was my Lord *Lovat* present, or no, at the Time when they declared what they came into the North for?

H. Frazer. He must have been present; because, where I heard them speak of it, was in his Room.

Mr. Attorney General. Do you remember my Lord *Lovat* said any thing, and what, upon his being told of the Views of *Barisdale* and *Glengarie's* coming into the North?

H. Frazer. He said, They might raise Five thousand Men: And I don't remember I heard him say any more upon this Subject.

Mr. Attorney General. How long did you continue at *Castle-Downey* this time that you went there?

H. Frazer. For a matter of Twelve or Fourteen Days, I believe, at first.

Mr. Attorney General. Whither did you go to when you went from *Castle-Downey*?

H. Frazer. I returned to *Edinburgh*.

Mr. Attorney General. Did my Lord *Lovat* charge you with any thing, to be communicated at *Edinburgh*, as from him?

H. Frazer. I am sorry to say he did.

Mr. Attorney General. What was that Charge my Lord *Lovat* gave you to communicate? and to whom was you to communicate it?

H. Frazer. What my Lord *Lovat* gave me in Charge to communicate, was in Import, the Conversation I before mentioned to have passed at *Castle-Downey*, That he had once intended to have raised and headed such a Number of Men as I mentioned.

Mr. Attorney General. What Number was that?

H. Frazer. Four or Five thousand, the Number I have mentioned already.

Mr. Attorney General. Pray give an Account to my Lords, of the Remainder of the Messages which my Lord *Lovat* sent by you to *Edinburgh*.

H. Frazer. It was this: That he intended to have headed such a Number of Men; but that his Age and Infirmities would not allow him to do that; and that he had resolved his Son should head the *Frasers*, and go into the Rebellion.

Mr. Attorney General. Did my Lord *Lovat* add any thing to what you have now mentioned? Did he give any Reason why he chose to send his Son rather than go himself?

H. Frazer. I have given the Reason already: To the best of my Remembrance, that was the principal Reason.

Mr. Attorney General. Did he give any other? Did he mention any thing relating to his Marks of Affection for the Cause?

H. Frazer. He said, the Master of *Lovat's* going, for whom he had such a Regard, was a greater Mark of his Attachment and Affection, than if he had gone himself.

Mr. Attorney General. Did he, at that time, mention any thing of the Danger there might be of his going himself personally? and what Danger was it?

H. Frazer. He talked much of the Inconvenience and Danger that would attend it; and mentioned the Inconvenience of crossing the *Forth*; and that it could be done no other Way than by the Bridge of *Stirling*.

A Lord. I desire to know to whom the Message was sent?

Mr. Attorney General. I intended to ask the Question the noble Lord mentions. You were giving an Account of some Inconveniences that Lord *Lovat* had mentioned; go on with it.

H. Frazer. I have given the Reason why he did not go himself; I mentioned *Stirling* Bridge; and that he said it was impossible for him to cross the *Forth* elsewhere; and that might be very dangerous to him.

Mr.

Mr. Attorney General. To whom did he charge you with that Message? or to whom was it to be delivered?

H. Frazer. To the Pretender's Son.

Mr. Attorney General. Did you, or did you not, deliver that Message to the Pretender's Son?

H. Frazer. I did deliver it to him.

Mr. Attorney General. What Answer did the Pretender's Son give you to it?

H. Frazer. The Answer he gave, was no more than that it was very well, or to that Purpose.

Mr. Attorney General. Who was it gave that Answer to you?

H. Frazer. The Pretender's Son.

Mr. Attorney General. How long did you continue at *Edinburgh* after this, before you went from thence?

H. Frazer. I continued at *Edinburgh* from that Time, which was the Time of my Arrival from the North, in the Beginning of *October*, till the Beginning of *November* after.

Mr. Attorney General. Before you left *Edinburgh*, did any Person, in behalf of the Pretender's Son, come to you; and who, in order to employ you upon any Message to my Lord *Lovat*?

H. Frazer. I left *Edinburgh* twice; which of the Times is meant?

Mr. Attorney General. When you left *Edinburgh* at the Beginning of *November*.

H. Frazer. Before I left *Edinburgh* in *November*, I was called upon by one who appeared to me to be in the Service of the Pretender, and by him carried to *Holyrood-House*.

Mr. Attorney General. Who was at *Holyrood-House* then?

H. Frazer. The Pretender's Son was the principal Tenant.

Mr. Attorney General. When you came to *Holyrood-House*, who was the Person you was brought before? and what Conversation passed between you?

H. Frazer. I was brought before Mr. *Murray*.

Mr. Attorney General. Who is he?

H. Frazer. *John Murray* of *Broughton*, who then took upon him the Name of Secretary to the Pretender's Son.

Mr. Attorney General. Was any body with Mr. *Murray*, at the time you had this Meeting with him, when you went to *Holyrood-House*?

H. Frazer. There were Two or Three Gentlemen in the House.

Mr. Attorney General. Can you name them?

H. Frazer. Some of them I can.

Mr. Attorney General. Who were they?

H. Frazer. *Cameron* of *Lockiel* was one.

Mr. Attorney General. Who was there else?

H. Frazer. *MacDonald*, and *Stuart* of *Ardshields*; these Three were in the Room with Mr. *Murray*.

Mr. Attorney General. Was *MacDonald* of *Keppoch* there?

H. Frazer. Yes.

Mr. Attorney General. What did Mr. *Murray* say to you, upon that Occasion?

H. Frazer. He told me, that there had been a Letter intercepted from the North, which was directed to me; and that he understood, from that Letter, that it was owing to me that the *Frasers* had not already marched.

Mr. Attorney General. Marched whither?

H. Frazer. Marched, and gone into the Rebellion; and that the Letter bore, that none of them would march till I should go into the North Country.

Mr. Attorney General. Was any thing said concerning my Lord *Lovat*, upon that Occasion?

H. Frazer. I believe Mr. *Murray* told me, that he had heard from a Gentleman who was one of their own Party, that my Lord *Lovat* was very well disposed towards supporting the Cause.

Mr. Attorney General. Did he say any thing concerning my Lord *Lovat*'s Intention to raise Men, or no?

H. Frazer. I can't tell.

Mr. Attorney General. In the Letter was any thing of it mentioned?

H. Frazer. The Letter I never saw; it was not given to me: I asked for a Sight of the Letter, and asked from whom it was written; and they told me it was from one of the *Frasers*.

Mr. Attorney General. Did you give any Answer to this, or no?

H. Frazer.

H. Frazer. The Answer I gave was, That it was a Misrepresentation of me, and a Falshood.

Mr. Attorney General. In what respect was it a Misrepresentation?

H. Frazer. Because the moving, or not moving, of the *Frasers*, no way depended on me.

Mr. Attorney General. Please to give an Account, and go on with what passed between Mr. Murray and you.

H. Frazer. Mr. Murray said, That it was possible it might be so; but that it was necessary, for the Vindication of my Character, that I should go into the North Country.

Mr. Attorney General. Go on.

H. Frazer. I told him, that my Business would not allow me to do it.

Mr. Attorney General. What was agreed upon then?

H. Frazer. That I should write such an Account of the Situation of the Rebel Army at *Edinburgh*, as he then gave me; and they would be satisfied with such Account.

Mr. Attorney General. Did you, or did you not, agree to this?

H. Frazer. I did agree to it.

Mr. Attorney General. What was the Consequence of that Agreement?

H. Frazer. I agreed to it, and obtained a Pass for the Bearer of it; and, in Consequence of that Pass, I meant to send what I took to be the real State of the Matter on both Sides.

Mr. Attorney General. Did you, or did you not write, according to this Proposal?

H. Frazer. I went to write, and was about doing it, when I was called upon a Second time by the same Person who had called upon me before, and was brought by him to the same Place.

Mr. Attorney General. What passed when you was thus brought back to the same Place?

H. Frazer. I was told that Writing would not do, but I must go myself.

Lord High Steward. Who told you so?

H. Frazer. Mr. Murray.

Mr. Attorney General. Be pleased to inform their Lordships, what was done upon that? Did you, or did you not, agree to go?

H. Frazer. In the End, I did agree to it, because I understood, if I had not, I must have expected a worse Service.

Mr. Attorney General. What was the Message you was to go upon?

H. Frazer. The Message I was charged with was to give such an Account of their own Situation as they had given me.

Mr. Attorney General. Was you charged with any Letter for my Lord *Lovat*? and from whom?

H. Frazer. There was a Letter from Mr. *John Murray* delivered to me, and directed to my Lord *Lovat*.

Mr. Attorney General. Was it delivered to you open or sealed?

H. Frazer. The Letter was open when it was delivered to me.

Mr. Attorney General. Did you, or did you not, read it?

H. Frazer. I did read it.

Mr. Attorney General. Who delivered it to you?

H. Frazer. Mr. Murray.

Mr. Attorney General. Pray give an Account to my Lords, of the Contents of that Letter that was thus delivered to you by Mr. Murray.

H. Frazer. The Import, or Contents of the Letter, was, to the best of my Remembrance, That Mr. Murray was extremely glad of the Accounts he had received, with respect to my Lord *Lovat*'s Intentions; and that he begged of him to persevere in them; and that he earnestly desired, that the *Frasers* should march forthwith: And, I think, to the best of my Remembrance, there was a Route directed for them.

Mr. Attorney General. Was there any Place mentioned where they were to meet the Army?

H. Frazer. The Place where it was intended, according to that Route, they should join the Rebel Army, was about *Moffat* or *Carlisle*.

Mr. Attorney General. Did you go with that Letter, or not, to my Lord *Lovat*?

H. Frazer. I went into the North Country; and, some time after my Arrival at that Place, I delivered that Letter.

Mr. Attorney General. To whom did you deliver that Letter?

H. Frazer. To my Lord *Lovat*.

Mr. Attorney General. When you delivered Lord *Lovat* that Letter, did you give him any Account of the Situation either of the Rebels, or the King's Army, or of the Affairs relating to the Rebellion?

H. Frazer.

H. Frazer. I gave him the Account, which I intended to have wrote, of the Situation on both Sides of the Question, so far as I knew of it.

Mr. Attorney General. What was that Representation that you made, and did, in Fact, deliver or give to my Lord *Lovat*?

H. Frazer. The Representation I delivered to my Lord *Lovat*, at that time, was this, That, with respect to the Government, there were above 21 Battalions of Forces arrived from *Flanders*: That there were Two Regiments arrived from *Ireland*: That the *Dutch* Auxiliaries were expected: And that the Rebels did not seem to be a Party sufficient, according to their Number, to engage with such a Number of regular and well-disciplined Forces.

Mr. Attorney General. What did my Lord *Lovat* say to this Representation of yours, that you thus made to him?

H. Frazer. My Lord *Lovat* said, that he conceived what I had said, with respect to the Situation of Affairs on both Sides of the Question, to be very true.

Mr. Attorney General. What did he say, as the Consequence of that Belief of his?

H. Frazer. He further said,—But that he thought himself too far engaged to look back.

Mr. Attorney General. Did he say any thing else relating to that Matter?

H. Frazer. Yes, I believe it was Part of the Conversation, that he forbid me to mention or intimate any thing of the Conversation that had thus passed between us, to his Son.

Mr. Attorney General. Can you tell the Reason why he was unwilling, that his Son should know of it?

H. Frazer. As for the Reason, that must depend upon my own Conjecture, since Lord *Lovat* expressed none.

Mr. Attorney General. Did you continue at my Lord *Lovat*'s House after this, for any, and what, time?

H. Frazer. I continued from my Arrival there, which was the Beginning of *November*, till the Middle, or towards the End, of *December*.

Mr. Attorney General. You had, by that, an Opportunity of seeing some of my Lord *Lovat*'s Conduct, and hearing his Conversation: Please to give an Account to my Lords, whether there was any Rendezvous of the *Frasers*, my Lord *Lovat*'s Clan, during the time you were there?

H. Frazer. I heard there was a Rendezvous before I came into the Country; but I was present at none, nor saw any while I was there. I suppose, by the Word Rendezvous, you mean a Gathering of Men.

Mr. Attorney General. Have you ever seen any of them?

H. Frazer. I never saw an universal one, or general one: Perhaps I might see Forty or Fifty Men together at a time.

Mr. Attorney General. Have you seen Forty or Fifty Men, at a time, gathered together there, as a Body of Men in Arms?

H. Frazer. No, I cannot say I did see, or was present at, any Gathering of Men in Arms.

Mr. Attorney General. Did you ever see a List of the Officers appointed out of my Lord *Lovat*'s Clan?

H. Frazer. I have seen such a List.

Mr. Attorney General. By whom was that List shewn to you?

H. Frazer. It was shewn to me by the Master of *Lovat*.

Mr. Attorney General. Do you know whether my Lord *Lovat* saw that List?

H. Frazer. I do not know that, indeed.

Mr. Attorney General. Was you yourself appointed, or named, as one of the Officers, in that List?

H. Frazer. I was.

Mr. Attorney General. What was the Office, or Post, you had there?

H. Frazer. I was named there a Captain-Lieutenant.

Mr. Attorney General. Did my Lord *Lovat* call you by that Name, or Title, or by any other, after this time?

H. Frazer. My Lord *Lovat* has called me by that Name after this.

Mr. Attorney General. Was it, or was it not, the usual Name he called you by?

H. Frazer. Yes, very often.

Mr. Attorney General. Did he ever call you by the Name of Captain before that time?

H. Frazer. No.

Mr. Attorney General. What did you understand by your being called by that Name by my Lord *Lovat*? Did you understand by that, that he looked upon you as a Captain, or Officer, in his Son's Regiment?

H. Frazer. I understood by that, that my Lord *Lovat* apprehended it was so wrote in that List.

Mr. Attorney General. Did my Lord *Lovat* understand by it, and so express himself, that you were actually a Captain, as well as wrote so, in that List?

H. Frazer. Actually a Captain I was not; he could not understand what was not, because, as I had not undertaken or done any thing, all the Foundation he had for calling me Captain, was owing to my Name being in that List.

Mr. Attorney General. Have you had any Conversation with my Lord *Lovat*, concerning his Dissatisfaction at his Son's Backwardness, in raising the *Frasers*?

H. Frazer. I have heard my Lord *Lovat* complain sometimes of his Son's Backwardness to raise the Clan, and sometimes of his too much Forwardness.

Mr. Attorney General. Did you ever hear him say any thing concerning the Consequence of this Engagement of his in the Rebellion, in respect to himself?

H. Frazer. I have heard him say, that he apprehended the Conduct of his Clan, upon this Occasion, would be his Ruin, and very probably cost him his Life.

Mr. Attorney General. I beg you will inform their Lordships, whether the Officers of this Clan, or of the Master of *Lovat's* Regiment, did, or did not, use to live, or dine, with my Lord *Lovat*.

H. Frazer. I have dined at my Lord *Lovat's* Table several times, with the Officers who were named in that List.

Mr. Attorney General. Did you ever hear the Pretender's Son spoken of at Dinner, or at any other time, in my Lord *Lovat's* House?

H. Frazer. Any particular Conversation, with respect to the Pretender's Son, I cannot recollect; but that he has been spoken of, there is little Reason to doubt, because it was the Topick of Conversation in all the Country.

Mr. Attorney General. By what Name or Title was the Pretender's Son usually called, in the Conversation between my Lord *Lovat* and those Officers?

H. Frazer. To the Conversation between my Lord *Lovat*, and those Officers, I cannot answer; but, in the Conversation upon that Subject, in my Lord *Lovat's* Presence, I can say he was called Prince *Charles*.

Mr. Attorney General. Now, my Lords, I will beg Leave to ask the Witness concerning another Matter of Fact: Did you ever hear my Lord *Lovat* say any thing concerning a Patent to create him Duke of *Frazer*, by the Pretender?

H. Frazer. I have heard him say there was such a thing in being.

Mr. Attorney General. Did he ever say, whether he had, or had not, seen the original Patent, or any Copy of it?

H. Frazer. He did not say, that he had seen the Patent; I think he said he had never seen it.

Mr. Attorney General. Did you ever hear him say any thing concerning any Copy of it which he had?

H. Frazer. He shewed me Half a Sheet of Paper, whereon was wrote what had been shewn or given to him, as a Copy of such a Patent.

Mr. Attorney General. What Patent do you mean?

H. Frazer. The Patent to create him a Duke.

Mr. Attorney General. By whom was that Patent said to be granted?

H. Frazer. The Copy that I saw was in the Name of one whom I took to be the Old Pretender, who called himself *James* the VIIIth.

Mr. Attorney General. How was that subscribed? do you recollect?

H. Frazer. I don't remember it was subscribed, or superscribed.

Mr. Attorney General. Was there any Name at the Top of it?

H. Frazer. I really cannot say.

Mr. Attorney General. That Copy which you saw, by whom was it shewn to you?

H. Frazer. It was shewed me by my Lord *Lovat*.

Mr. Attorney General. You was saying, that you continued with my Lord *Lovat*, from the Second time you came to *Castle-Downey*, to the latter End of *December*: Please to inform their Lordships, if, during that Interval of Time, any of the Men of the *Frasers* did actually march, in order to go to the Pretender's Army, or to join them?

H. Frazer. Yes; there were Men that marched: About Six or Seven Companies of Men marched about Six or Seven Miles from their own Country, to an adjacent Country.

Mr. Attorney General. What Place was that they went to?

H. Frazer. It was a Place called *Urquhart*.

Mr. Attorney General. What became of those Men? how far did they march?

H. Frazer. I said before, about Six or Seven Miles.

Mr. Attorney General. Were they afterwards recalled?

H. Frazer. They were.

Mr.

Mr. Attorney General. Who were they recalled by?
H. Fraser. They were recalled by a Letter from my Lord *Lovat*, directed to his Son the Master of *Lovat*.

Mr. Attorney General. Did, or did not, they comply with that Letter which recalled them?

H. Fraser. The Son complied; and they, in Consequence, I suppose, complied with the Son's Orders.

Mr. Attorney General. Did the whole Clan comply?

H. Fraser. All, except about 25 of them.

Mr. Attorney General. Did they return to their own Habitations?

H. Fraser. They returned.

Mr. Attorney General. At or about what time was this?

H. Fraser. I believe it was in the Month of *November*.

Mr. Attorney General. Now, Sir, I would ask you, Did you take it, that the Master of *Lovat* marched with them, by Order of my Lord *Lovat*; or was it out of his own Head that he thus marched?

H. Fraser. The Men had marched, and were in that Country, before the Master of *Lovat* went from *Castle-Downey*: When he went from *Castle-Downey*, it was not with a View to proceed upon that March, in case he should be able to prevail on the Men to return. I went along with the Master; and, after we came where the Men were, we called the Officers together, and proposed to them, that they should return: The only Reason we gave them for this Advice was, a Storm of Snow which then fell, and which would probably render their March very troublesome: But, by the Influence of *MacDonald* of *Barisdale*, it was carried against the Master's Sentiments, that they should march. Upon that Resolution, I returned to *Castle-Downey*; and, a few Hours after my Return, my Lord *Lovat* wrote the Letter I mentioned himself; which occasioned their coming back.

Mr. Attorney General. Please to inform their Lordships, Whether you was sent, at any time, by my Lord *Lovat*, to the Lord President of the Session of *Scotland*: Or mention first, if my Lord President was at *Inverness*.

H. Fraser. He then was at his own House at *Culloden*.

Mr. Attorney General. Was my Lord *Loudon* there?

H. Fraser. He was at *Inverness*.

Mr. Attorney General. Was you sent by my Lord *Lovat* to the Lord President, or to my Lord *Loudon*, with any, and what Message?

H. Fraser. I was sent by my Lord *Lovat* to my Lord President and my Lord *Loudon* both.

Mr. Attorney General. What was the Message that you was sent with?

H. Fraser. The Intention of the Message was, to see to discover from those Gentlemen, what would be the Result of the *Frasers* marching, and going into the Rebellion.

Mr. Attorney General. Was that the Intention of the Message?

H. Fraser. Yes; it was.

Mr. Attorney General. Did you carry any Letter, or Letters, from my Lord *Lovat* to the Lord President, or my Lord *Loudon*?

H. Fraser. There was a Letter I carried from my Lord *Lovat* to the Lord President.

Mr. Attorney General. Did you know what was the Contents of that Letter? Did you read it?

H. Fraser. I did.

Mr. Attorney General. What were the Contents of it?

H. Fraser. The Contents of it were, informing my Lord President, That the Master of *Lovat* had gone off in a headstrong Way, and carried the *Frasers* into the Rebellion.

Mr. Attorney General. What did my Lord *Lovat* mean by the Word *headstrong*?

H. Fraser. I suppose he meant, that it was contrary to his Advice.

Mr. Attorney General. When you came to my Lord President, did you deliver that Letter?

H. Fraser. Yes; I did.

Mr. Attorney General. What Answer did my Lord President give to it?

H. Fraser. He told me by Word of Mouth, That the Consequence that would arise to my Lord *Lovat* from such a Step taken by his Clan, would, in all Probability, be the Seizing of his Person, and making an Inquiry into his Conduct.

Mr. Attorney General. Did you, or did you not, return with that Answer of my Lord President, and deliver it to my Lord *Lovat*?

H. Fraser. I returned with that Answer of Lord President, and with an Answer to the same Purpose from my Lord *Loudon*, and delivered them both to my Lord *Lovat*.

Mr.

Mr. Attorney General. Was you likewise charged with a Letter from my Lord President to Lord Lovat?

H. Fraser. My Lord President did write to my Lord Lovat, in Return to his Letter.

Mr. Attorney General. Did you see that Letter?

H. Fraser. I saw it.

Mr. Attorney General. Can you give my Lords an Account of the Contents of it?

H. Fraser. The Import of it was what I already told their Lordships.

Mr. Attorney General. Did you, or did you not, go to my Lord Lovat with those Messages, and this Letter?

H. Fraser. I did.

Mr. Attorney General. Before you delivered this Letter, or these Messages, had you any Meeting with the Master of Lovat?

H. Fraser. I had a Meeting with the Master of Lovat upon the Way. It was concerted between him and me before I set out upon that Message, that he should meet me privately by the Way, in my Return, in order to know what passed between my Lord President and me, and my Lord Loudon and me.

Mr. Attorney General. Had you that Meeting before your Return?

H. Fraser. Yes; I had.

Mr. Attorney General. What passed between you Two at that Meeting?

H. Fraser. I made a Report to the Master of Lovat of all the Conversation I had with those Two Gentlemen.

Mr. Attorney General. Was there any thing concerted or agreed between you Two upon that Occasion?

H. Fraser. The Result of our comparing our Sentiments on that Meeting was, that the Master of Lovat, if it was possible, should be got immediately sent over to Holland; and that the Scheme, which we had proposed some Months before, should then be put in Execution, with respect to the Master of Lovat's following his Education at Leiden, or some other University in the Low Countries.

Mr. Attorney General. What Answer did you return to my Lord Lovat, in regard to these Messages?

H. Fraser. I reported what was agreed upon between the Master and me, and agreeable to my Lord President's Letter, and to my Lord Loudon's verbal Message by me: I say, we had agreed, that there was a Report to be made agreeable to this Resolution between the Master and me, to my Lord Lovat.

Mr. Attorney General. Please to inform their Lordships, in the first place, Whether you delivered my Lord President's Letter to my Lord Lovat?

H. Fraser. I did.

Mr. Attorney General. And did you make a Report to my Lord Lovat, according to what was agreed upon between his Son and you?

H. Fraser. I did.

Mr. Attorney General. Please to repeat them again to my Lords; and state what was the Message you delivered to my Lord Lovat, besides the Letter?

H. Fraser. The Report I delivered to my Lord Lovat, besides delivering the Letter, was this, That it was my Lord President's Belief, that an Order would be immediately sent down from London for the seizing his Person, and inquiring into his Conduct; and that it was my Lord Loudon's Determination to put that Order in Execution, as soon as ever it came into his Hands.

Mr. Attorney General. Do you recollect any thing more concerning it? Do you remember whether it was to be put in Execution, in case the Frasers did, or in case they did not march?

H. Fraser. In case the Frasers did march.

Mr. Attorney General. Is this the whole Substance of the Report that you made to Lord Lovat?

H. Fraser. Yes; so far as I remember.

Mr. Attorney General. What Answer did my Lord Lovat make you upon that Occasion?

H. Fraser. When I made the Report, I do not remember any particular Conversation that passed upon it.

Mr. Attorney General. Did he give you any Answer to it at any other time? and when?

H. Fraser. There was a Conversation between us soon after about it: I believe it was the next Day after my Return to Castle-Downey.

Mr. Attorney General. What did my Lord Lovat then say to you relating to those Messages, or to that Report which you made?

H. Fraser. I believe my Lord Lovat said, That he thought the Report of securing his Person, and inquiring into his Conduct, was to be considered rather as a Bugbear.

Mr.

Mr. Attorney General. Was the Master of *Lovat* present at that time?

H. Frazer. Yes: He was.

Mr. Attorney General. What did my Lord *Lovat* say to his Son upon that Occasion?

H. Frazer. My Lord *Lovat* told his Son, what I have already said, That he looked upon it to be rather a Bugbear: And that it was his Opinion, he should proceed in the Undertaking he was engaged in.

Mr. Attorney General. Did he, upon that Occasion, give or make any Orders concerning what was to be done?

H. Frazer. Yes: That the Men should march immediately.

Mr. Attorney General. Did he give any Orders for it?

H. Frazer. Not in the Way of an Order.

Mr. Attorney General. What did he say upon the Occasion?

H. Frazer. That it was his Opinion, That the Men should march immediately.

Mr. Attorney General. What Men did you understand by that, were to march immediately?

H. Frazer. The Clan of the *Frasers*.

Mr. Attorney General. What March did you understand it was to be? Or, whither were they to march?

H. Frazer. To join the Rebel Army.

Mr. Attorney General. Was there any other Company present at this Conversation, besides my Lord *Lovat*, and the Master, and you?

H. Frazer. Yes: There were Two other Gentlemen.

Mr. Attorney General. Did Lord *Lovat* then say any thing to them concerning it, by way of asking their Opinion, or their Agreement to it?

H. Frazer. He asked the Opinion of all the Gentlemen present, after he had given his own, by saying, That it was his Opinion; and that he hoped all the Gentlemen present agreed to it.

Mr. Attorney General. What did you understand by that?

H. Frazer. That he hoped all present agreed to the Opinion which he had delivered himself.

Mr. Attorney General. Did you give any Answer to that? or any Opinion concerning it?

H. Frazer. Yes; I did.

Mr. Attorney General. What was it?

H. Frazer. So far as I remember, the Answer I made was, That my Opinion had not been asked; but that, notwithstanding that, I thought myself obliged to give it: And it was this, That if the Affair could not be intirely dropped, that it should be put off for some time.

Mr. Attorney General. Did my Lord *Lovat* give any Answer to that?

H. Frazer. When I said, That my Opinion had not been asked, he told me, That some Peoples Opinion might be easily read in their Countenances, or Words to that Purpose.

Mr. Attorney General. What Answer did you make upon that?

H. Frazer. The Answer I have already given.

Mr. Attorney General. What Answer did Lord *Lovat* give as to the putting off the March for awhile?

H. Frazer. No Answer at all, so far as I remember. The Master of *Lovat*, upon that, burst out into Tears; and said, He had been made a Fool of, and a Tool from first to last.

Mr. Attorney General. Did he say any thing more?

H. Frazer. Yes: He said, That he had been one Day doing, and another Day undoing; but that now he was determined, that whatsoever Resolution Lord *Lovat* should come to, that he would execute it, let the Consequence be what it would with respect to himself, and other People.

Mr. Attorney General. Was there any thing more passed? Did Lord *Lovat* say any thing upon this Occasion?

H. Frazer. My Lord *Lovat* said, That he had given his Opinion already; and that he would not alter it; or to that Effect.

Mr. Attorney General. You have seen my Lord *Lovat*, and his Son, pretty often, together, and were at his House for Two or Three Months together; pray what was your Opinion as to the Backwardness of the Master of *Lovat*? or as to his Obedience or Disobedience to his Father, in respect to his going into the Rebellion? Do you think that the Master was guilty of Obstinacy and Disobedience to his Father in going into the Rebellion? or that, by so doing, he complied with his Father's Orders and Inclinations?

H. Frazer. If I am to form my Opinion, with respect to the Master of *Lovat*, upon his own good Sense and Understanding, or his avowed Principles, I should apprehend, that he

would not have gone into the Rebellion, had he been left to himself: And if I am to form my Opinion upon the private Conversation I had with him, and particularly one, which I remember I had in *Urquharts*; I say, if I am to form my Opinion upon what he declared with respect to his Intentions and Sentiments declared to me, it is my Belief, that he would not have had any Concern in this Rebellion, had he been intirely left to himself.

Mr. Attorney General. I desire to ask you, Sir, Whether, from your Knowledge of the Situation of the Clan of the *Frasers*, and of the Power and Influence, which either my Lord *Lovat*, or the Master, had over them, do you think, that the Master of *Lovat* could have raised the Clan, without the Concurrence and Order of my Lord *Lovat*?

H. Frazer. I believe, had the Lord *Lovat* and the Master acted in direct Opposition the one to the other, that the Clan would have been divided; and Part would have gone with one, and Part with the other; but what Part to either of them, is what I cannot determine.

Mr. Attorney General. About what time was it that the News came first to *Castle-Downey* of the Landing of Lord *John Drummond*, with Soldiers, from *France*?

H. Frazer. It was about a Day before I went to my Lord President, or that Day.

Mr. Attorney General. I desire to know, Whether, in your Opinion, that News had any Influence to determine my Lord *Lovat*'s Conduct at that time?

H. Frazer. I cannot take upon me to say what it was that determined my Lord *Lovat*'s Conduct.

Mr. Attorney General. Did you hear my Lord *Lovat* say any thing about that particular Event of Lord *John Drummond*'s landing then?

H. Frazer. I've heard my Lord *Lovat* report what Intelligence had been returned to him on account of that Landing.

Mr. Attorney General. Please to give an Account to my Lords when the Master of *Lovat* and the *Frasers* did march? and where they marched to?

H. Frazer. Some Part of the *Frasers* marched at one time, and some at another: Some of them marched a short time after this Conversation passed between my Lord *Lovat* and the Master, at which I was present.

Mr. Attorney General. Where did they march first?

H. Frazer. They marched first to *Perth*; but the Master of *Lovat* did not go along with them.

Mr. Attorney General. Did my Lord *Lovat* know, or not know, of their marching?

H. Frazer. That I don't know of my own Knowledge; but that my Lord *Lovat* must have heard of their March, is certain.

Mr. Attorney General. Did they, or did they not, march against his Orders?

H. Frazer. Truly that is what I cannot easily answer: He certainly gave Orders for them not to march sometimes, and it was sometimes given out, that he gave Orders for their marching; but I did not see either of these Orders.

Mr. Attorney General. Please to give my Lords an Account when the *Frasers* did march to *Perth*? and be as correct as you can.

H. Frazer. The Times that they marched were different.

Mr. Attorney General. Did they march in large Numbers?

H. Frazer. They marched in very small Numbers, not, I believe, above Fifty at a time; and the Number that marched in all was but very small.

Mr. Attorney General. What Number do you suppose might march?

H. Frazer. When they were strongest at *Perth*, they were between Two and Three hundred at most.

Mr. Attorney General. Please to give an Account to my Lords, Whether my Lord *Lovat* was apprehended by Lord *Loudon*'s, or my Lord President's Order? and when?

H. Frazer. The next Morning after the Conversation passed between the Lord *Lovat* and the Master, as I mentioned already, I left *Castle-Downey*.

Mr. Attorney General. Were the *Frasers* then gone, or were they going to *Perth*?

H. Frazer. I believe there were none of them gone at that time; but I cannot say that I remember positively; but their March was then resolved on.

Mr. Attorney General. Do you remember when it was precisely that you came from my Lord President's to my Lord *Lovat*?

H. Frazer. I do not remember the precise Day of the Month.

Mr. Attorney General. About what Time of the Month was it?

H. Frazer. I dare say it must be about the Beginning of *December*.

Mr. Attorney General. You say, That you went to *Perth* with the Master of *Lovat*; pray who was with you?

H. Frazer. The Master and I went to *Perth* by ourselves alone.

Mr. Attorney General. When you came there, where was the Body of the Rebel Army?

H. Frazer.

H. Frazer. I believe it was in England.

Mr. Attorney General. How soon after that did they come into Scotland again?

H. Frazer. About Two or Three Weeks at most, after the Master and I had got to Perth, there came an Account, that the Rebel Army had returned to Glasgow.

Mr. Attorney General. Had you any Orders from the Pretender's Son about marching?

H. Frazer. There were Orders given by Mr. Murray, that the Rebel Forces should march to Stirling, to join those coming from Glasgow.

Mr. Attorney General. Did the Frasers go thither?

H. Frazer. They did.

Mr. Attorney General. How far did they go?

H. Frazer. To Stirling.

Mr. Attorney General. Was there any Message sent to Glasgow, or any Place thereabouts, by the Master of Lovat relating to the Frasers?

H. Frazer. Yes, there was: It was sent from Perth to Glasgow.

Mr. Attorney General. For what Purpose was it sent?

H. Frazer. In order to procure Firelocks for the Frasers.

Mr. Attorney General. Did you yourself go to Glasgow?

H. Frazer. I did.

Mr. Attorney General. To whom did you apply there?

H. Frazer. To Mr. John Murray.

Mr. Attorney General. Please to give an Account to my Lords what was the Effect of that Application of yours?

H. Frazer. The Effect of it was, that an Order was sent to Lord John Drummond, in the Name of one that called himself the French Ambassador, that Lord John Drummond should deliver Arms for the Frasers out of the Arms that he had in Charge, that were the King of France's Arms, as he himself said.

Mr. Attorney General. How long did you stay at Glasgow?

H. Frazer. About Twenty-four Hours.

Mr. Attorney General. Before your Return from thence, had you any Conversation or Meeting with Mr. Murray of Broughton, the Pretender's Secretary?

H. Frazer. I called upon him there, and saw him in his own Room.

Mr. Attorney General. What was the Import of your Conversation at that Meeting?

H. Frazer. The Business that brought me there was, to desire him to send the Arms I mentioned.

Mr. Attorney General. Was that the only Subject of your Conversation?

H. Frazer. No: We talked with respect to the Situation of Matters in the North Country, and with respect to the Imprisonment of my Lord Lovat, and his Escape from Inverness, which I had then heard of.

Mr. Attorney General. Was there any Proposal then made concerning the Army's going into the North Country to take Inverness?

H. Frazer. There was a Proposal then made, that a Detachment should be sent from the Army, in order to make themselves Masters of Inverness.

Mr. Attorney General. What more passed between you relating to this Proposal?

H. Frazer. That Proposal was agreed to, and a Resolution formed upon it, in a Council that was called in the Afternoon.

Mr. Attorney General. Did you at that time hear any thing, or receive any thing, from my Lord Lovat?

H. Frazer. No: I had no Charge from my Lord Lovat when I went to Glasgow.

Mr. Attorney General. But, when you was there, did you receive any Order from Lord Lovat?

H. Frazer. I received no Order or Letter from my Lord Lovat, while I was at Glasgow.

Mr. Attorney General. Had you any Orders or Letters from Lord Lovat at all relating to the sending any Men Northward; I do not mean while you was at Glasgow, but in Stratharrick, or any other Place?

H. Frazer. Before I went to Perth, there was a Letter delivered to me.

Mr. Attorney General. You say it was concerted to send a Detachment to Inverness, or that a Detachment of the Army should go thither: What was done in pursuance of that Resolution?

H. Frazer. Nothing at all.

Mr. Attorney General. You say, That you received a Letter from my Lord Lovat at Stratharrick; pray what were the Contents of it?

H. Frazer. I did say so: There was a Letter delivered to me: It was not signed; but it appeared to me to be the Hand-writing of Robert Frazer, who then acted as Secretary to my Lord Lovat; but it had no Name subscribed to it.

Mr. Attorney General. What was the Import of that Letter?

H. Frazer. The Request of the Letter was, That I should have gone to *Perth*, in order to have prevailed with the Gentlemen who commanded at that Place, to send a Number of Forces to *Inverness*, in order to make themselves Masters of that Place, by dislodging my Lord *Lovat*, and to rescue my Lord *Lovat*.

Mr. Attorney General. Was any thing done upon this?

H. Frazer. Nothing: I refused to do it.

Mr. Attorney General. Before you went from *Glasgow*, and returned with the Answer to the Message you had delivered there, did you receive any Message from Mr. *Murray* the Secretary, or any Packet? and what was it?

H. Frazer. Mr. *Murray* proposed to me to carry a Packet from *Glasgow* to *Perth*.

Mr. Attorney General. Did he deliver you any Packet?

H. Frazer. I refused to take it; because, I told him, that very probably his Packet would require Dispatch; and that I rid my own Horses, and did not incline to abuse them.

Mr. Attorney General. Did you, or did you not, receive the Packet?

H. Frazer. When he told me afterwards, That he had no other Person to carry it, and that it did not require Dispatch, I accepted of the Packet.

Mr. Attorney General. Do you know what that Packet contained?

H. Frazer. I came to know it afterwards.

Mr. Attorney General. And what were the Contents of it?

H. Frazer. There was a separate Letter, directed to the Master of *Lovat* only, with respect to the Army; and there was a large Packet of Papers, not directed to any Person, but which, Mr. *Murray* told me, I was to deliver to the Master of *Lovat*.

Mr. Attorney General. Do you know what that Letter, or Packet, did contain?

H. Frazer. Upon my Return to *Perth*, as the Master of *Lovat* happened not to be there at that time, another Gentleman and I took the Freedom to open the large Packet.

Mr. Attorney General. What did you find in it?

H. Frazer. There was in it a Commission of Lieutenant-General to my Lord *Lovat*, that is, in my Lord *Lovat*'s Name; and it was granted in the Name of *James* the VIIIth.

Mr. Attorney General. What was there in it else?

H. Frazer. There was another Commission in it, to my Lord *Lovat*, of Lieutenant of some Northern County, granted in the same Manner.

Mr. Attorney General. Did that appear to be signed and sealed by the Pretender?

H. Frazer. It had a Subscription and Superscription, and a Seal.

Mr. Attorney General. Was there any thing else contained in that Packet?

H. Frazer. There was another Commission to a Gentleman of the Name of *Frazer*.

Mr. Attorney General. What did that Commission import to be?

H. Frazer. It was a Colonel's Commission.

Mr. Attorney General. Do you recollect to whom it was made?

H. Frazer. The Gentleman was named *Frazer*: One who was called *Inverlacky*, and a Gentleman of that Name, was then acting in that Capacity among the *Frasers*.

Mr. Attorney General. Did that Commission appear, upon the Face of it, to be signed and sealed? and by whom?

H. Frazer. Yes, it was signed and sealed in the same manner as the other Commissions were.

Mr. Attorney General. Was there any thing else in the Packet?

H. Frazer. There was a Letter under the Hand of the Pretender's Son.

Mr. Attorney General. To whom was that directed?

H. Frazer. It was directed to my Lord *Lovat*.

Mr. Attorney General. Was there any other Paper there?

H. Frazer. Yes; there was a Letter from Mr. *Murray*, *Cameron* of *Lochiel*, and *MacPherison* of *Clunie*.

Mr. Attorney General. To whom was that Letter directed?

H. Frazer. That Letter had no Direction, or Cover; it was in the large Cover.

Mr. Attorney General. Were those all that were in the large Cover?

H. Frazer. All that I remember.

Mr. Attorney General. Was the large Cover addressed to any body?

H. Frazer. No.

Mr. Attorney General. What was the Reason of that?

H. Frazer. The Reason given me by Mr. *Murray* was, That it was intended for my Lord *Lovat*; but could not be directed, because he could not ascertain by what Title to write it.

Mr. Attorney General. What was the doubted Title?

H. Frazer;

H. Frazer. The doubted Title was that of a Duke.

Mr. Attorney General. Duke of what?

H. Frazer. Duke of *Frazer*, or *Beaufort*: *Frazer*, I believe.

Mr. Attorney General. Does not my Lord *Lovat*'s House go by Two Names?

H. Frazer. Yes, by the Name of *Castle-Downey* and *Beaufort*.

Mr. Attorney General. Do you know, whether that Letter that was signed by *Clunie MacPherson*, *Lochiel*, and *Mr. Murray*, was referred to in the Letter that was sent by the Pretender's Son?

H. Frazer. I don't know that it was.

Mr. Attorney General. Do you recollect the Substance of the Letter from the Pretender's Son to my Lord *Lovat*?

H. Frazer. The Substance of the Letter, as far as I can recollect, was requesting my Lord *Lovat* to come and join with him in Person.

Mr. Attorney General. My Lords, These are all the Questions we have to ask of this Witness.

Lord High Steward. My Lord *Lovat*, The Gentlemen of the House of Commons have done with this Witness: Would your Lordship ask him any Questions?

Lord Lovat. My Lords, I have told your Lordships already, that I am so ill that I am not able to speak, or to get up, or sit down; and therefore hope your Lordships will indulge me to retire a little, and refresh myself.

Lord High Steward. My Lords, My Lord *Lovat* desires Leave to withdraw for a little while.

Lords. Ay, ay.

Upon which Lord Lovat withdrew for a little while: And being returned,

Lord Lovat. I desire, that your Lordships will indulge me in permitting your Clerk to read the Questions I would ask.

Lords. Ay, ay.

Lord Lovat. Was not you taken Prisoner by the King's Forces, after the Battle of *Culloden*?

H. Frazer. I was.

Lord Lovat. Have you not been in Custody ever since? and are not you so now?

H. Frazer. I have been, and I am.

Lord Lovat. Have you as yet obtained any Pardon?

H. Frazer. I know of none.

Lord Lovat. Are you in Expectation of a Pardon from what you shall depose against me?

H. Frazer. I will answer that Question very readily. I do not expect Punishment will be inflicted; but I assure your Lordship, it is no Condition or Paction made with me.

Lord Lovat. Have you ever had any Offer made to you of a Pardon, upon this or any other Condition? and what was that Condition?

H. Frazer. I have had no Offers made to me of a Pardon, upon any Condition whatever.

Lord Talbot. My Lords, I have taken a particular Account of the Evidence of this Witness; which I beg Leave to repeat to your Lordships, in the Presence of the Witness, that, in case I misrepresent any Part, he may correct it, I having been already accused of Unfairness, in the Manner of stating my Questions. My Lords, The Witness says, that the Men marched before the Master of *Lovat* went from *Castle-Downey*: That he and the Master of *Lovat* followed the Men, and endeavoured to prevail upon them to return; but that *Barisdale* prevailed upon them to advance, contrary to the Desire and Advice of the Master of *Lovat*: That my Lord *Lovat* afterwards wrote a Letter to them to return; and that they did return: That my Lord *Lovat* certainly gave Orders sometimes, that they should not march. Am I right in this State of the Evidence?

H. Frazer. Yes; my Lord *Lovat* certainly gave Orders for them sometimes not to march; and, I believe, he gave Orders, at other times, for them to march.

Lord Talbot. My Lords, he says, That he believes that, at other times, my Lord *Lovat* ordered them to march: But, my Lords, this might be only a general Report, without any Foundation, as it might be the Report of *Barisdale*, in order to prevail on them to march.

Lord High Steward. My Lords, The noble Lord is in the right, to state the Evidence to the Witness, in order to introduce Questions, by way of Explanation; but to observe upon that Evidence now, is not regular.

Lord Talbot. My Lords, All that I mean is to come at the Truth; which I cannot do from my own Knowledge.

Lord Talbot. You have said, that you have heard my Lord *Lovat* say, that the Conduct of his Clan might cost him his Life.

H. Frazer. I did.

Lord Talbot. Now, my Lords, the Question I would ask him, from all this put together, is, Whether he did understand, by these Expressions of my Lord *Lovat*, that he disapproved of the Conduct of his Clan?

H. Frazer. That my Lord *Lovat* disapproved to me in private, and that I have heard him disapprove, and condemn in publick, the Conduct of his Clan, is Truth: That I affirm before Almighty God.

Lord Talbot. Have you been examined by any body relating to this Tryal, since you was a Prisoner, before you came to this Place?

H. Frazer. I have.

Lord Talbot. My Lords, I will beg Leave to ask him, Whether the Confessions he made upon that Examination, or the Answers he gave there, proceeded from the Hope of a Pardon?

H. Frazer. I cannot say, that I would have done it, had I been convinced, that I should meet with no Mercy; tho', at the same time, I had no Assurance given me of Mercy; neither had I any Promise of Pardon.

Lord Talbot. Do you believe, that your Pardon may depend upon the Consistency of the Evidence you shall give here with what you have said upon those former Examinations?

Duke of Bedford. My Lords, I do not think that is a proper Question to be asked of any Witness; and, if it is insisted upon to be asked, I shall beg your Lordships may adjourn to the Chamber of Parliament, to determine that Question: And I will there give my Reasons against it.

Lord Talbot. My Lords, I have no Partiality for the noble Lord at the Bar; but what I have said proceeded from a Principle of Humanity, a Principle of Honour, and a Principle of Justice.

Lord High Steward. You have spoke of different Orders that were given at different Times: Sometimes my Lord *Lovat* ordered the Men to march, and, at other times, not to march. Do you know, of your own Knowledge, of any of these Orders being given?

H. Frazer. I have already said, that I saw an Order under his Hand, for the returning of Seven Companies of Men, from *Urquhart*, whither they had marched.

Lord High Steward. Whither were they to return?

H. Frazer. To their own Houses.

Lord High Steward. When was that Order given?

H. Frazer. In the Month of *November*.

Lord High Steward. What Orders did you ever see, or hear, from my Lord *Lovat*, for the Men to march?

H. Frazer. I never saw any Order of my Lord *Lovat*, for the Men to march.

Lord High Steward. Then why did you speak of those Orders?

H. Frazer. I have given my Reason for that, That I heard such Orders talked of; but that I heard them given, I never did say, and never will.

Lord Orford. When my Lord *Lovat* declared himself dissatisfied with the Conduct of his Clan, was it for their being too forward, or too backward, in going into Rebellion?

H. Frazer. I have said already, That I have heard him dissatisfied for their too great Forwardness, and I have likewise heard him dissatisfied for their too great Backwardness.

Mr. Attorney General. My Lords, In Consequence of some Questions that have been asked, I beg Leave to know of this Witness, Whether what he has said in Evidence before your Lordships, notwithstanding his having said it under the Circumstances of his being now a Prisoner, is, or is not, true?

H. Frazer. I say, that what I have said, is literally Fact.

Mr. Attorney General. Then I beg he may inform your Lordships, Whether, supposing he had been called on to be a Witness, and had not been a Prisoner, but had been, by virtue of your Lordships Summons, obliged to come before you, to give Evidence upon this Tryal, would he have given any other Evidence than what he hath given before your Lordships?

H. Frazer. If I would give Evidence in any Case, it should be the Truth; and, if the Truth were such as I did not choose to disclose, I would declare positively, that I would give no Evidence at all.

Mr. Attorney General. Was not you in so dangerous a Condition, in point of Health, when you were at *Fort Augustus*, that your Life was not expected?

H. Frazer. At *Fort Augustus* I was past all Hopes of Recovery, and at *Inverness*.

Mr. Attorney General. During that Time, did not you give, in Substance, the same Account of these Transactions as you have given now?

H. Frazer. There were Questions asked me then; and the Answers I gave to them were the real Truth: Matters were not then so fully explicated as they have been since; so that those Declarations were not so compleat as the Account I have given now: But the Answers that I made there, were still the real genuine Truth, as to those Questions that I was asked; and so is the Account I have now given.

Mr. Attorney General. I beg he may inform your Lordships, if, so far as his Examination then went, it was not the same as his Examination is now?

H. Frazer. So far as the Examination was then extended, it was the same as now: Truth is always the same; it will never vary from itself.

Mr. Attorney General. Did you not then expect to die?

H. Frazer. I expected not to live, sure enough.

Mr. Attorney General. Was it from the Condition you were in by your Distemper, that you expected not to live?

H. Frazer. It was from my Wounds, and the Ailments that I laboured under.

Mr. Attorney General. My Lords, We have done with this Witness.

A Lord. I beg this Witness may inform your Lordships, If the Packet which he carried from Mr. Murray, containing the Papers that he has mentioned, was ever delivered? and to whom?

H. Frazer. That Packet was never delivered to my Lord Lovat.

A Lord. I beg he may inform your Lordships, to whom that Packet was delivered?

H. Frazer. When I came to *Perth*, a Gentleman, who then commanded among the *Frasers*, and I, opened the Packet, to see what it contained; and, while I was intended to shut it up again, and to forward it to the Master of *Lovat*, the Master himself came into the Room; and I told him the Freedom we had used with those Letters and Packets: He said, that we might always use that Freedom, and were welcome. All those Papers which I have mentioned to have been contained in that Packet, were then lying upon the Table where we stayed: I told the Master, in general, what they were; and he threw them from him; and there they continued to lie till I went from *Perth* to *Stirling*: And, as that March was made a little precipitately, those Papers, and every thing else that belonged to me, that were in the Room, were thrown into my Cloak-Bag, and they and my Cloak-Bag continued in my Possession till some few Days before the Battle of *Culloden*, when I lodged them in a House at *Inverness*, and went myself to the Field of Battle.

[Then the Witnesses, by the Direction of the Lord High Steward, withdrew.]

Sir William Yonge. My Lords, The next Gentleman we beg Leave to call, is Lieutenant *Alexander Campbell*.

Lieutenant Campbell called into Court.

Lord High Steward. My Lord *Lovat*, Have you any Objection to Lieutenant *Campbell* being a Witness?

Lord Lovat. I don't know him: I never heard of him.

Alexander Campbell sworn.

Sir William Yonge. My Lords, We beg Leave to ask this Witness, Whether, at any time, in the Year 1745, he went to *Castle-Downey*?

A. Campbell. Yes, I did.

Sir William Yonge. About what time was it that you went?

A. Campbell. I don't remember particularly: It was some time in *October*.

Sir William Yonge. Upon what Account did you go there?

A. Campbell. To require some Cattle that were carried off from some People in the Shire of *Refs*.

Sir William Yonge. By whom were these Cattle carried off?

A. Campbell. By some of my Lord *Lovat*'s People: I don't know whether it was done by his Orders, or not.

Sir William Yonge. When you came near *Castle-Downey*, did you see any Number of armed Men?

A. Campbell. Yes, I did.

Sir William Yonge. How was you received by those armed Men? with Acclamations? or in what Manner? and how many were there of them?

A. Campbell.

A. Campbell. I cannot condescend upon the Number of Men.

Sir William Yonge. How was you received by them? with Acclamations? or how?

A. Campbell. Yes.

Sir William Yonge. How was you received? in what Manner?

A. Campbell. They were all out with their Arms; some of the *MacLeod's* Deserters that came from *Inverness*.

Sir William Yonge. How were you received there by those Men? in what Manner?

A. Campbell. Some of them took off their Bonnets.

Sir William Yonge. Werethere any Shouts, or Huzzas, made use of?

A. Campbell. Yes; some of them did.

Sir William Yonge. Upon what Account?

A. Campbell. I can't tell.

Sir William Yonge. Did not they say any thing to you of the Reason of it?

A. Campbell. No; they spoke nothing to me.

Sir William Yonge. Did you go to dine with my Lord *Lovat*, at *Castle-Downey*?

A. Campbell. No; I did not.

Sir William Yonge. Was you at *Castle-Downey* with him?

A. Campbell. Yes.

Sir William Yonge. Had you any Conversation with my Lord *Lovat* there?

A. Campbell. Yes.

Sir William Yonge. What Conversation had you with him?

A. Campbell. I told him, I came to require the Cattle; and he told me, the Cattle were not brought there by his Order, but his Son's.

Sir William Yonge. My Lords, The Witness had better go on with the rest of the Conversation: I know he can, without being asked particular Questions; for I would not lead him.

A. Campbell. I do not remember what passed.

Lord Talbot. My Lords, I must take Notice to your Lordships, that I think it is a very odd Expression to make use of to a Witness, That he had better answer the Questions; for I know he can: It is a kind of threatening the Witness.

Sir William Yonge. My Lords, I stand here as a Manager, on this Tryal, for the Commons of *Great Britain*; and, I hope, I say nothing that is offensive to your Lordships; and that the Manner in which I asked the Witness the Question, shewed that it proceeded from a Fairness in stating of it. My Lords, I think, as a Manager, I ought to know what a Witness can say; and the whole Tendency of what I said, was advising the Witness, without giving your Lordships unnecessary Trouble, to tell all he knew, fairly and impartially, without my being obliged to put any leading Questions to him: And I hope, I shall have your Lordships Liberty to go on.

Lord High Steward. My Lords, Every body knows, that it is the constant Course and Usage of Parliament, that, when a Committee of Managers is appointed by the House of Commons, upon an Impeachment, it is their Duty to examine, and they always do examine, the Witnesses beforehand: And the same Method is used by Prosecutors for the Crown, upon Indictments. If this was not done, it would be impossible to know, whether a Witness could speak materially to the Facts in Question, or not.

Lord Talbot. My Lords, Tho' they are Managers, I am a Judge. I have as high a Veneration for the Representatives of this Kingdom, as any Man in the World; I sat some time among them myself: But, I am sure, my Lords, the Representatives of *England* do not desire a Language may be used to a Witness, that may seem threatening. And, my Lords, I took the Expression used by the Manager in this Light. The Expression was, That he had better speak; which, I apprehend, was as much as to say, That, if he hoped for Mercy, he must tell it. My Lords, I desire a fair Examination, that I may form a true Judgment. My Honour depends upon it.

Lord High Steward. My Lords, I desire this may be forborn. It is my Duty to acquaint your Lordships, that it is irregular, and contrary to all Rules of Proceeding. The Honourable Manager explained his Words in a very proper and candid Manner, that he thought it was fairer in him to ask the Witness general Questions, to declare what he knew of the Fact, than any particular Questions, which might tend to lead him; and he was in the right.

Mr. Attorney General. My Lords, In order to clear up this Matter, I beg Leave to ask the Witness, Whether he is now a Prisoner?

A. Campbell. No.

Mr. Attorney General. Was you ever a Prisoner?

A. Campbell. Yes; I was a Prisoner with the Rebels.

Mr.

Mr. Attorney General. Had you then the King's Commission?

A. Campbell. Yes; when I was a Prisoner.

Mr. Attorney General. Was you engaged in the King's Behalf against the Rebels, when you was taken?

A. Campbell. Yes.

Sir William Yonge. Your Lordships now see, That the Witness is no Prisoner, nor under any Terror or Apprehension, but has now the King's Commission in his Pocket; and therefore I beg Leave to ask him, What the Conversation was that passed between my Lord *Lovat* and him about the Cattle?

A. Campbell. As I did not expect to be called here as a Witness, so I do not remember what passed upon that Occasion.

Sir William Yonge. Did my Lord *Lovat* persuade you to join the Rebels, or not?

A. Campbell. He did not.

Sir William Yonge. Did he say nothing to induce you to it?

A. Campbell. He said nothing at all to induce me to join them.

Sir William Yonge. Or his Son?

A. Campbell. No.

Sir William Yonge. My Lords, I don't know whether it be so proper; But have you never said so?

A. Campbell. No; I never did say so.

Mr. Noel. My Lords, I beg Leave to ask him, Whether any Discourse passed between my Lord *Lovat* and him touching the Rebellion?

A. Campbell. Yes.

Mr. Noel. Pray tell my Lords what that was?

A. Campbell. He said, His Son was engaged in the Rebellion, not him; and that he was a very loyal Person.

Mr. Noel. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Would you ask this Witness any Questions?

Lord Lovat. No; I have no Questions, my Lord, to ask this Witness: I never saw him before in my Life.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Mr. Lyttelton. My Lords, The next Witness we shall produce, is *Peter Frazer*, Tutor of *Belledrum*.

Peter Frazer was called into Court.

Lord Lovat. My Lords, I have a material Objection to this Witness: He is my Tenant in all that he possesses.

Lord High Steward. Would your Lordship ask him that Question? Or, would you prove it upon him by Witnesses?

Lord Lovat. I humbly think he will not deny it. If he does, I have Witnesses to prove it.

Mr. Attorney General. My Lords, I beg the noble Lord at the Bar may explain what he means by saying, If he denies it, that he has Witnesses to prove it; for, if the noble Lord puts it to the Oath of the Witness, and he denies it, then he cannot, without the Consent of the Commons, call a Witness to prove it.

Lord High Steward. My Lords, The Rule is, That, upon an Objection made to the Competency of a Witness, the Party objecting may either put it to the Oath of the Witness produced, or call Witnesses to prove it. If he puts it to the Oath of the Witness produced, then he is concluded as to the Point of Competency, by the Answer he gives to it, unless the other Side consents to wave that. My Lord *Lovat*, Do you choose to put this to the Oath of *Peter Frazer*, or to call a Witness to prove it?

Lord Talbot. My Lords, I desire to know, if this Witness should deny it, whether my Lord *Lovat* may not give Evidence of this Man's being his Tenant, when he comes upon his Defence.

Lord High Steward. Gentlemen of the House of Commons, You hear what the noble Lord says; what do you say to it?

Mr. Attorney General. My Lords, To be sure my Lord *Lovat* may give such Proof by way of Objection to the Credit of the Witness; but not to his Competency.

Lord High Steward. My Lord *Lovat*, Do you choose now to put this Question to the Oath of the Witness himself, or to call a Witness to prove it?

Lord Lovat. I will put it to his own Oath.

Then the Witness was sworn upon a Voire Dire:

Lord Lovat. My Lords, I desire to ask him, Whether or no the Lands he possesses are not my Lands?

P. Frazer. Yes; they are: I possess them in virtue of my Nephews Right, who hold a Tack under my Lord Lovat.

Lord High Steward. How do you hold them in virtue of your Nephews? Is it as their Manager, or Tutor?

A Lord. My Lords, I will beg Leave to ask a Question to explain that; which is, Whether or no the Witness pays the Rents of those Lands to my Lord Lovat's Chamberlain or Steward?

P. Frazer. I do.

Lord Lovat. Do you pay any Part of that Rent in your own Right?

P. Frazer. No; I do not: I only pay it in virtue of my Nephews, as taking Care of them.

Mr. Attorney General. My Lords, The Question, which the noble Lord at the Bar has now put to the Witness, is that which I intended to have put to him; which is, Whether he holds any Lands in his own Right, or only as Tutor? He has told your Lordships, That he holds none in his own Right, but only as Tutor to his Nephews.

Mr. Lyttelton. My Lords, We pray the Witness may be sworn in Chief.

Peter Frazer sworn in Chief.

Lord Lovat. My Lords, I beg to ask him, Whether he does not hold a Tack of Land within the Lordship of Lovat, of Aird, or Strathbarrick?

P. Frazer. I do not.

Mr. Lyttelton. I beg this Witness may inform your Lordships, Whether, in the Year 1745, he was at my Lord Lovat's House at Castle-Downey?

P. Frazer. Yes; I was.

Mr. Lyttelton. And whether he remembers to have seen any of my Lord Lovat's Men rendezvous there about that time?

P. Frazer. Yes; I did.

Mr. Lyttelton. Did you see any of the Officers that headed those Men go to my Lord Lovat's House, and converse with him there?

P. Frazer. Yes; I did.

Mr. Lyttelton. Who did you see there?

P. Frazer. Simon Frazer of MacLeod.

Mr. Lyttelton. Did he talk to my Lord Lovat about the Regiment? or ask any Orders from him?

P. Frazer. I never heard him say any thing; only that my Lord Lovat desired him to go to their Colonel: That is all I heard.

Mr. Lyttelton. Who did he call their Colonel?

P. Frazer. His Son, the Master of Lovat.

Mr. Lyttelton. How came he to be their Colonel? Had not the Lord Lovat the absolute Power over his Clan?

P. Frazer. Yes; he had.

Mr. Lyttelton. Do you imagine or believe, that the Master of Lovat could have carried the Frasers into the Rebellion, if his Father had been against it?

P. Frazer. No; he could not: I am sure he could not.

Mr. Lyttelton. Had the Master of Lovat any manner of Foundation to think he could raise the Men himself? Or did he, at his own Charge or Cost, pay those Men when they went into the Rebellion? Or, had he Money to do it?

P. Frazer. I suppose he had no Money of his own.

Mr. Lyttelton. Who do you think furnished him with the Money necessary for that Purpose?

P. Frazer. Really I know nothing of the Money: I saw no Money given.

Mr. Lyttelton. Do you know any thing of Barisdale's keeping a Party of Men upon my Lord Lovat's Ground?

P. Frazer. Yes.

Mr. Lyttelton. What were they there to do?

P. Frazer. To overawe the Country.

Mr. Lyttelton. To do what?

P. Frazer.

P. Frazer. To rise in Arms.

Mr. Lyttelton. In Arms for whom?

P. Frazer. For the Pretender.

Mr. Lyttelton. Had he got any of them to rise in Arms then?

P. Frazer. Yes.

Mr. Lyttelton. Did he make any of my Lord *Lovat*'s Vassals rise in Arms at that time?

P. Frazer. They staid in the Country till they saw some of the Men did convene.

Mr. Lyttelton. Do you know of any body's giving the Men any Cattle or Meal?

P. Frazer. Yes: My Lord *Lovat* gave them some Cows.

Mr. Lyttelton. To whose Men? To *Barisdale*'s Men?

P. Frazer. No; to my Lord *Lovat*'s Men.

Mr. Lyttelton. Those that joined with *Barisdale*?

P. Frazer. Yes.

Mr. Lyttelton. Did you see *Barisdale* converse with my Lord *Lovat* then?

P. Frazer. Yes; I did.

Mr. Lyttelton. Did my Lord *Lovat* know that he was then in the Rebellion?

P. Frazer. No doubt of it.

Mr. Lyttelton. Did he wear any Mark of Distinction to shew it?

P. Frazer. He wore a white Cockade.

Mr. Lyttelton. Do you remember any Part of the Conversation between *Barisdale*, *MacLeod*, and my Lord *Lovat*, concerning my Lord's declaring openly for the Pretender?

P. Frazer. I remember one Day, that *Alexander MacLeod* said, That all would be well, if my Lord would pull off the Mask: Upon which my Lord *Lovat*, by way of Reply, pulled off his Hat, and said, There it is then.

Mr. Lyttelton. What did that Conversation relate to?

P. Frazer. I heard no more of it.

Mr. Lyttelton. What were they talking about?

P. Frazer. I only heard, that he said, All would be well, if my Lord *Lovat* would pull off the Mask.

Mr. Lyttelton. What did that Conversation mean? What meant all would be well?

P. Frazer. I can't tell.

Mr. Lyttelton. What did my Lord *Lovat* mean by pulling off his Hat?

P. Frazer. All that they said was, That all would be well, if my Lord would pull off the Mask: Upon which my Lord *Lovat* pulled off his Hat, and said, Here it is then.

Mr. Lyttelton. Did he throw his Hat down?

P. Frazer. I did not see that.

Mr. Lyttelton. Did my Lord *Lovat* offer you to be an Officer?

P. Frazer. No; he never did.

Mr. Lyttelton. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Would you ask this Witness any Questions?

Lord Lovat. Was you examined at *Inverness*? and by whom? and who were the Persons you saw there?

P. Frazer. I was examined at *Inverness* before one *Kilravock*: He was a Depute. And I was examined before my Lord *Loudon*.

Lord Lovat. Was you examined upon Oath?

P. Frazer. Yes: I was summoned, and strictly deponed.

Lord Lovat. Upon Oath?

P. Frazer. Upon Oath.

Lord Lovat. Who were the Persons you saw at *Inverness*, when you was examined?

P. Frazer. We were examined but one by one: As soon as one was examined, another was called; and no other Person heard what the Examinations were.

Lord Lovat. Who were present at the Examinations?

P. Frazer. Lord *Loudon*, *Kilravock*, and a Clerk.

Lord Lovat. At what time was you examined at *Inverness*?

P. Frazer. I don't remember the Day of the Month, indeed.

Lord Lovat. What Month was it?

P. Frazer. It was in *January*; the Latter-end of *January*.

Lord Lovat. In *January* last?

P. Frazer. Yes; in *January* last.

Lord High Steward. You say you were at *Castle-Downey* in 1745, and saw all the Men rendezvous there: In what Month was that?

P. Frazer. In *November*.

Then

Then the Prisoner begged Leave to withdraw a little: Which was granted; and he soon after returned to the Bar again.

Mr. Legge. The next Witness we shall call is *John Farquhar*.

At the Prisoner's Request, he was sworn upon a Voire Dire.

Lord Lovat. Are you Tenant to me?

J. Farquhar. No.

Lord Lovat. What is your Name?

J. Farquhar. *John Farquhar*.

Lord Lovat. What Employment are you of?

J. Farquhar. I was Servant to *Mr. Murray*.

John Farquhar sworn in Chief.

Mr. Legge. My Lords, We propose to examine this Witness to the Steps taken by my Lord *Lovat* subsequent to the Battle of *Culloden*, in order to revive and restore the Pretender's Cause in *Scotland*.

Mr. Legge. Was not you Servant to *Mr. Murray* of *Broughton*?

J. Farquhar. Yes.

Mr. Legge. In what Capacity did you serve him?

J. Farquhar. I was his Groom.

Mr. Legge. For what Space of Time did you serve him? From what Time, and to what Time?

J. Farquhar. From *Michaelmas* till the Ninth of *June* last.

Mr. Legge. In what Year?

J. Farquhar. In 1745.

Mr. Legge. Was there a Meeting of the Chieftains in the Rebel Army after the Battle of *Culloden*?

J. Farquhar. Yes.

Mr. Legge. When was that Meeting?

J. Farquhar. On the 10th of *May* last.

Mr. Legge. Who were the Persons that met on that Occasion?

J. Farquhar. *Mr. Murray* of *Broughton*, *Lochiel*, young *Clanronald*, *Cameron* of *Dungallon*, *Doctor Cameron*, and several others that I did not know, and my Lord *Lovat*: They met at the Island of *Mortlaig*.

Mr. Legge. Did you hear of any *French* Ships having landed any Money in *Scotland* then?

J. Farquhar. Yes.

Mr. Legge. Upon what Day did you hear that they landed that Money?

J. Farquhar. Upon the 4th of *May*.

Mr. Legge. What did you imagine was the Subject-Matter of the Meeting you mentioned?

J. Farquhar. In order to have a Second Gathering of the Rebel Army.

Mr. Legge. Did you hear any, and what Orders given to any body, and to whom, upon that Occasion?

J. Farquhar. There was an Order for the Men to be gathered together at a Place called *Glenmany*.

Mr. Legge. Who were the Persons that gave those Orders?

J. Farquhar. There was *Lochiel*, and the several other Persons that were present at the Meeting.

Mr. Legge. How did Lord *Lovat* behave on that Occasion? Did he express any Satisfaction on that Head?

J. Farquhar. He was present during all the Time I was there.

Mr. Legge. Did he say any thing about the Number of Men that were to be raised?

J. Farquhar. The next Morning, when the Parties were going away, my Lord *Lovat* said, They had no need to fear; and he did not doubt raising Eight or Ten thousand Men presently.

Some Lords desired the last Answer to be repeated: Which was accordingly done by the Witness, as follows:

J. Farquhar. The next Morning, when the Parties were going away, Lord *Lovat* said, That there was no Need to fear; for that he did not doubt to raise Eight or Ten thousand

Men presently; and that those, with the *Highland Men*, would be able to fight the Elector of *Hanover's Troops*: He said this to *Lochiel's Officers*: When they embraced each other.

Mr. Legge. Had my Lord *Lovat* any of his own Clan there?

J. Farquhar. Yes: He had some of them to wait upon him.

Mr. Legge. Were they armed?

J. Farquhar. Yes, with Swords, Dirks, and Pistols.

Mr. Legge. Did they wear any Mark of Distinction in their Hats?

J. Farquhar. Some of them had Sprigs of Yew, and such like things, in their Hats; by which they were known to be of that Party.

Mr. Legge. Did you hear my Lord *Lovat* express any Wishes that he had joined their Army?

J. Farquhar. He said, He wished to God he had joined the Prince, as he called him, at first when he came over.

Mr. Legge. While you was there, did you hear the Pretender's Health drank?

J. Farquhar. Yes.

Mr. Legge. By what Stile or Title?

J. Farquhar. By the Title of Prince *Charles*, to the young one.

Mr. Legge. And what Title did they give to the old one?

J. Farquhar. The Title of *James* the Eighth.

Mr. Legge. Who were the Persons that drank it? Did you hear my Lord *Lovat* drink it?

J. Farquhar. Yes.

Mr. Legge. Pray how long did this Council last?

J. Farquhar. From Night till next Morning: I was there from Two o'Clock till Ten in the Morning.

Mr. Legge. You mentioned the *French Money's* being landed on the 4th of *May*; do you know any thing of the Disposition of any Part of that Money?

J. Farquhar. Yes.

Mr. Legge. To whom was it given?

J. Farquhar. To the Officers of the Rebel Army.

Mr. Legge. For what Purpose was it given them?

J. Farquhar. For a Second Gathering of the Men.

Mr. Legge. Do you know what was the general Resolution that That Council came to? or what was their Determination?

J. Farquhar. That they would assemble a Body of the several Clans to march South, so far as I could conjecture.

Mr. Legge. Why do you conjecture that?

J. Farquhar. I heard it.

Mr. Legge. Did you hear of any Expectation of further Assistance from *France*?

J. Farquhar. Yes.

Mr. Legge. What Number of Men did you expect?

J. Farquhar. I did not hear any particular Number mentioned; but we expected a Reinforcement every Day.

Mr. Legge. Where was the Rendezvous to have been?

J. Farquhar. At *Glenmany*.

Mr. Legge. Did they meet there?

J. Farquhar. Yes; several of them.

Mr. Legge. What do you think prevented the rest of them from meeting there?

J. Farquhar. The King's Troops.

Mr. Legge. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Will you ask this Witness any Questions?

Lord Lovat. Was you taken Prisoner by the King's Forces?

J. Farquhar. No.

Lord Lovat. Do you know whether the Money, that came over from *France* in the Ship, was given to Mr. *Murray*?

J. Farquhar. I cannot tell. Mr. *Murray* was there when the Money came.

A Lord. Do you know of any more Meetings than one between *Lochiel* and Lord *Lovat*?

J. Farquhar. No.

[Then the Witness, by the Direction of the Lord High Steward, withdrew.]

Mr. Grenville. My Lords, The next Witness we beg Leave to call, is *Charles Stuart*.

Charles Stuart called into Court.

Lord High Steward. My Lord Lovat, Have you any Objection to this Witness?
Lord Lovat. No.

Charles Stuart sworn.

Mr. Grenville. My Lords, We beg this Witness may inform your Lordships, whether he remembers the Battle of Culloden?

C. Stuart. Yes.

Mr. Grenville. Did you go with Mr. Murray, the Pretender's Son's Secretary, after that Battle, to Morlaig?

C. Stuart. Yes.

Mr. Grenville. Was there a Meeting there of any of the Rebel Officers?

C. Stuart. Yes.

Mr. Grenville. Who were present?

C. Stuart. There were Lockiel, Clanronald, Barisdale, and several others.

Mr. Grenville. Was my Lord Lovat there?

C. Stuart. Yes; he was there.

Mr. Grenville. Where were they?

C. Stuart. In a little Hut.

Mr. Grenville. Was you in the Room with them?

C. Stuart. Yes; I was.

Mr. Grenville. Did you hear what passed in the Room? If you did, please to give my Lords an Account of what passed there?

C. Stuart. Lockiel and Mr. Murray of Broughton came there; where they met with my Lord Lovat, and several other of the Highland Chieftains. They wanted to create an Association for re-assembling the Men together, in order to procure a Peace, or Terms of Surrender, with the Duke of Cumberland, or to stand it out to the last. Mr. Murray ordered me to draw up the Articles; which I wrote: And it was signed by every Chief that was there.

Mr. Grenville. Did my Lord Lovat sign it?

C. Stuart. No: All but he.

Mr. Grenville. Was it proposed to him to sign it?

C. Stuart. Yes, it was; and he would not.

Mr. Grenville. What was the Purport of it?

C. Stuart. That they were to assemble again in Ten Days, in order to procure Terms of Peace from the Duke, or stand it out to the last.

Mr. Grenville. What Number of Frasers was proposed to be raised?

C. Stuart. I think Three or Four hundred.

Mr. Grenville. Did any body undertake for the Frasers?

C. Stuart. I think Lockiel did.

Mr. Grenville. At whose Request did he undertake for the Frasers?

C. Stuart. When it was proposed to my Lord Lovat to sign the Paper, he said, He would not; and desired Lockiel to answer for his Son.

Mr. Grenville. What did he say about Lockiel?

C. Stuart. He desired Lockiel to answer for his Son.

Mr. Grenville. Did he, or did he not, answer for him?

C. Stuart. I can't tell.

Mr. Grenville. What Reason did my Lord Lovat give why he would not sign the Paper himself?

C. Stuart. I don't remember he gave any Reason.

Mr. Grenville. Do you remember any Expressions made use of by my Lord Lovat then?

C. Stuart. No.

Mr. Grenville. Was there any Money given then to any of the Chiefs of the Clan?

C. Stuart. Yes, to all of them.

Mr. Grenville. Who delivered it to them?

C. Stuart. I did.

Mr. Grenville. Was there any delivered to my Lord Lovat?

C. Stuart. No, not to him; but it was given to some of the Persons about him: I don't know whether it was his Servant, or no.

Mr. Grenville. Was he my Lord Lovat's Servant?

C. Stuart.

- C. Stuart.* I don't know : He was a Person about him.
- Mr. Grenville.* For what was it delivered? For what Purpose?
- C. Stuart.* For the Master to raise the Men against the Time.
- Mr. Grenville.* You saw the Money given, and was the Person that delivered it?
- C. Stuart.* I did.
- Mr. Grenville.* How much was there of it?
- C. Stuart.* Seventy or Eighty Pounds.
- Mr. Grenville.* How came you by the Money?
- C. Stuart.* I got it from Mr. Murray.
- Mr. Grenville.* What Money was it?
- C. Stuart.* Part of 35,000 l. that was landed some Days before from France.
- Mr. Grenville.* Was my Lord Lovat present when the Money was delivered?
- C. Stuart.* Yes; he was.
- Mr. Grenville.* Did he object to any thing that was done, but to the Signing of the Paper?
- C. Stuart.* I don't remember he did.
- Mr. Grenville.* Was the Money that was given in Guineas, or in *Loudors*?
- C. Stuart.* It was all in *Loudors*.
- Mr. Grenville.* Was there any thing said about a Neutrality then?
- C. Stuart.* I think my Lord Lovat said, That he was a neutral Person; so would have no Concern in it.
- Mr. Grenville.* Do you remember Mr. Murray's being at *Arisaig*?
- C. Stuart.* Yes.
- Mr. Grenville.* Did he receive any Letter there from a Captain of any Guard that my Lord Lovat had?
- C. Stuart.* I saw a Man come from the House where my Lord was, and said, He came from the Captain of my Lord's Guards, with a Letter for Mr. Murray; and asked some Money of him.
- Mr. Grenville.* Did you send any Money to my Lord?
- C. Stuart.* Yes.
- Mr. Grenville.* How much did you send?
- C. Stuart.* I believe it was about Fifteen Guineas.
- Mr. Grenville.* By whose Order did you send it?
- C. Stuart.* It was by Mr. Murray's Orders I delivered the Money.
- Sir John Strange.* My Lords, I will beg Leave to ask this Witness, Whether he was ever abroad on any Occasion?
- C. Stuart.* I was; but 'tis long ago.
- Sir John Strange.* How long is it ago?
- C. Stuart.* It was in the Year 1736.
- Sir John Strange.* Do you remember to have met with a Person called *Roy Stuart* whilst you was abroad?
- C. Stuart.* Yes.
- Sir John Strange.* Where did you meet with him?
- C. Stuart.* At *Boulogn* in France.
- Sir John Strange.* Where was he going when you saw him there?
- C. Stuart.* He said he was going to *Rome*.
- Sir John Strange.* Please to recollect, as near as you can, the Time when it was you saw *Roy Stuart* at *Boulogn*, and give my Lords an Account thereof.
- C. Stuart.* I think it was in 1736, as near as I can remember.
- Sir John Strange.* When *Roy Stuart* told you he was going to *Rome*, did he say upon what Errand he was going?
- C. Stuart.* He said he was going with Letters of Recommendation from my Lord Lovat.
- Sir John Strange.* My Lords, I should not trouble your Lordships with asking the Witness any Questions of this Kind, if we had not laid a Foundation for it already, by having proved, that a Message was sent by this *Roy Stuart*, from my Lord Lovat, to the Pretender at *Rome*; and therefore, what I now inquire of him is not Matter of Hearsay; but it is in Corroboration of the Circumstance which has been proved to your Lordships, That my Lord Lovat did give such a Message to this *Roy Stuart*: And therefore I will beg Leave to ask this Witness, What Message did *Roy Stuart* say he was going upon?
- C. Stuart.* Nothing else.
- Lord Lovat.* My Lords, I submit it to your Lordships, If this, or any other Witness, shall be examined upon Hearsay Evidence.

Lord High Steward. My Lord *Lovat*, You hear in what manner the Managers offer this Evidence: They say, That they have proved by One Witness, That you sent a Message, by *Roy Stuart*, to the Pretender at *Rome*. Now, to corroborate that Evidence, they offer to prove, that *Roy Stuart*, about the same time, declared to this Witness, That he had such a Message to carry.

Lord Lovat. What the other Witness said was Hearsay.

Sir John Strange. My Lords, I will set the noble Lord at the Bar right. It was such Hearsay as he had from my Lord *Lovat*'s own Mouth; for *Chevis* the Witness said, on his Examination, That, after *Roy Stuart* had made his Escape out of *Inverness* Gaol, when he was going away to *Rome*, he heard my Lord *Lovat* charge him with a Message to the Pretender at *Rome*, to assure him of his Fidelity, and to prosecute the Affair of his Patent for a Duke: So that was not Hearsay, but Positive Evidence.

Lord Lovat. That Positive Evidence would say, That I was a natural Idiot.

Lord High Steward. *Chevis* did swear, either that he heard my Lord *Lovat* charge *Roy Stuart* with a Message to the Pretender, to assure him of his Fidelity, and to expedite his Commission of Lieutenant-General of the *Highlands*, and his Patent of a Duke; or else, that Lord *Lovat* told him, That he had charged *Roy Stuart* with such a Message: But I am not certain which it was.

Sir John Strange. My Lords, I beg Leave to ask the Witness, when he met with *Roy Stuart*, and he said he was going to *Rome*, What he said he was going upon?

C. Stuart. All that *Roy Stuart* said was, That he depended on Letters of Recommendation he had from my Lord *Lovat*; and was in Expectation of getting the Post that Colonel *Allan Cameron* had.

Sir John Strange. What Letters were those he mentioned?

C. Stuart. Letters, he said, he had from my Lord *Lovat*.

Mr. Solicitor General. My Lords, In order to explain a little more particularly the Affair of the Meeting: As this Witness says, That my Lord *Lovat* refused to sign the Paper, I desire to ask him, What Part my Lord *Lovat* took in the Deliberations about raising the Men, before he had an Opportunity of making that Refusal?

C. Stuart. I was busy at that time in distributing the Money, and do not remember.

Mr. Solicitor General. My Lords, We have done with our Examination of this Witness.

Lord High Steward. My Lord *Lovat*, Would you ask this Witness any Questions?

Lord Lovat. No.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Lord Coke. My Lords, The next Witness we beg Leave to produce, is Lieutenant *John Dalrymple*.

Lieutenant Dalrymple called into Court.

Lord High Steward. My Lord *Lovat*, Have you any Objections to Lieutenant *Dalrymple*?

Lord Lovat. My Lords, I do not know him; but have no Objections to any *Dalrymple*.

Lieutenant Dalrymple sworn.

Lord Coke. My Lords, I beg Leave to ask this Witness, Where he was when my Lord *Lovat* was taken?

Dalrymple. I was on board the *Furness* Sloop.

Lord Coke. Where was she?

Dalrymple. At *Loch Morar*.

Lord Coke. Had you any Conversation with my Lord *Lovat* after he was taken Prisoner?

Dalrymple. I had frequent Opportunities of discoursing with him, as I dined and supped with his Lordship on board the Sloop.

Lord Coke. What did he say upon those Discourses? What was the Purport of them?

Dalrymple. On the 8th of *June*, I heard him say, That, if his Advice had been taken, the Rebel Army might have laughed at the King's Troops, and tired them out all Summer. He said, It was not their Business to fight the King's Troops; but that, as Summer was coming on, they might have taken themselves to the Mountains, and could have lived on Butter, Cheese, and Milk; for that the Duke of *Cumberland*'s Horse could be of no Service to him in that Country. At another Time, I was asking his Lordship, How he came to be engaged in this Affair, after having received so many Favours from the Government? He said, He did it more in Revenge to the Ministry, for having taken away his Independent Company, than any thing else. And, in talking of the Pretender's Son, he called him Prince: And, when he came on board, there was one *Frazer* taken, from whom we took about

about Twenty-two Guineas; and my Lord *Lovat* complained, that the Money had been taken from his Servant, which he had given him to pay his Men with.

Lord Coke. Had my Lord *Lovat* any Men in Arms with him when he was taken?

Dalrymple. That I am no Judge of, because I was on board.

Lord Coke. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Would you ask this Witness any Questions?

Lord Lovat. Was you in Captain *Fergusson's* Ship?

Dalrymple. Yes; your Lordship may remember me very well.

Lord Lovat. Then I hope you parted my Money amongst you: Did you see him take my Strong Box, in which were 700 Guineas?

Dalrymple. I did not see him take the Box.

Lord Lovat. Did you see it in his Cabin?

Dalrymple. I saw the Outside of it; I never saw the Inside.

Sir John Strange. My Lords, He says he saw the Outside, but did not see the Inside of the Strong Box; he will inform your Lordships whether he was present when the Papers were taken out of that Box afterwards?

Dalrymple. No; I was not present at the Opening of it.

[*Then the Witness, by Direction of the Lord High Steward, withdrew.*]

Mr. Noel. My Lords, The next Witness we beg Leave to produce is *David Campbell*.

He was called into Court.

Lord High Steward. My Lord *Lovat*, Have you any Objection to *David Campbell*?

Lord Lovat. No; I have no Objection to any of the *Campbells*.

David Campbell sworn.

Mr. Noel. Please to tell my Lords, Whether you were with Captain *Fergusson* upon any Occasion, and in what Capacity?

D. Campbell. I was a Volunteer with General *Campbell* when we went to search the Islands; our Officers and Forces, that served with General *Campbell* in the *Western Highlands*, were divided; a good many went by Land, and a good many by Sea; and it fell to my Share to go with Captain *Fergusson*; I was, on board and on shore, with Captain *Fergusson* for about Six Weeks.

Mr. Noel. What Islands did you go to search? and for what Purpose?

D. Campbell. We went into several Islands to search.

Mr. Noel. Do you remember your going into the Island of *Morar*?

D. Campbell. The Coast of *Morar* is on the Continent.

Mr. Noel. Where did you search?

D. Campbell. All along the Continent, and in all the Islands that lie there.

Mr. Noel. Who did you find there?

D. Campbell. We found a good many Rebel Gentlemen in the Islands, and upon the Continent.

Mr. Noel. Did you find any of the *MacDonalds* there?

D. Campbell. We apprehended several of that Name.

Mr. Noel. Do you remember one called the Bishop, or Vicar-General?

D. Campbell. We had Intelligence of his being in *Morar*; but the Day we expected to have taken him, he escaped with some others.

Mr. Noel. Was you present when my Lord *Lovat* was taken?

D. Campbell. I was not present when he was taken, because it was ashore.

Mr. Noel. Did you see him after he was taken? and where?

D. Campbell. I saw him that Morning when he was taken, and brought on board the *Furnace Sloop*: I was then on board that Ship.

Mr. Noel. Did you search for any Letters belonging to my Lord *Lovat*, on his being brought on board? and where did you search?

D. Campbell. Captain *Duff*, who was the Captain of the *Terror* Man of War, was the oldest Officer, and, as such, was the Commanding Officer of all those Vessels; and when my Lord *Lovat* was brought on board, Captain *Duff* and Captain *Fergusson* determined to open his Box, and search it.

Mr. Noel. Did they find any Letters there?

D. Campbell. My Lord *Lovat*, and the Two Captains, desired me to be present at the Opening and Examining the Box; and accordingly I came off the Deck, and was present,

and was desired to take down a Particular of every thing in the Box ; which I did write down accordingly : And there was a Bundle of Papers, which seemed to be Letters, that was the last thing we came to in the Box ; and when we went to examine those Letters, I undertook to examine and read them, which I was desired to do ; and I read them all.

Mr. Noel. Do you remember any particular Letter that you took notice of to my Lord Lovat ? If you do, pray tell my Lords what Lord Lovat said upon it.

D. Campbell. I remember that the Purport of all the Letters, except the last, or the last but one, was about my Lord Lovat's domestic Affairs ; I cannot be positive whether it was the last, or the last but one ; but that was a Letter directed to my Lord from his Son.

Mr. Noel. Did you say any thing, and what, to my Lord, upon that Letter ?

D. Campbell. I read over that Letter ; my Lord Lovat at first had said to us, that we should not find, among those Papers that we were examining, any Matters of Disloyalty or Correspondence with the Rebels : And I expected it was so ; but this Letter seeming to be a Correspondence with the Rebels, I said to my Lord Lovat, after I had read the Letter, I think your Lordship had better not have had this Letter here : My Lord said, I was right, and he thought so to ; or to that Purpose.

Mr. Noel. Did you say any thing to my Lord Lovat concerning his engaging, or not engaging, in the Rebellion ?

D. Campbell. Yes.

Mr. Noel. What did you say to him ?

D. Campbell. I cannot be positive whether I said it in the Manner of a Question, or in the Way of Conversation ; but I took notice to him the one Way or the other, that I wondered his Lordship should be along with the Rebels, and be concerned in bringing his Country into Confusion. I remember I either asked him, or had Conversation with him, to this Effect.

Mr. Noel. What Answers did you receive from my Lord ?

D. Campbell. What I remember of the Purport and Effect of it was, that he had been disobliged by the Government, and angry ever since he had his Independent Company taken from him.

Mr. Noel. Did he give that as an Answer to the Question that you asked him ?

D. Campbell. He answered that immediately upon that Question, or this Part of the Conversation, as far as I can recollect.

Mr. Noel. Did you hear my Lord Lovat say any thing about his Opinion of fighting the Battle of Culloden ?

D. Campbell. Yes ; I have heard my Lord Lovat say, that the Rebels and the Pretender's Son did not behave Soldier-like in fighting the Duke of Cumberland at that Time.

Mr. Noel. Did he say that as the Opinion of others, or as his own Opinion ?

D. Campbell. To the best of my Remembrance, the Purport of the Conversation seemed to be, that he thought it was an unsoldier-like and a bad manner of carrying on their Affairs.

Mr. Noel. Did he say any thing about any Opinion of his having been or not been taken ?

D. Campbell. I don't remember I heard any thing of that.

Mr. Noel. Recollect yourself whether he did or no ?

D. Campbell. It is so long since that happened, and I never expected to be questioned about that Conversation, that I do not recollect any particular Circumstances about my Lord Lovat's giving any particular Reasons.

Mr. Noel. Did he speak any thing of his own Advice or Opinion not being followed ? and what was it ? or to what Purport or Effect ?

D. Campbell. I cannot recollect whether he did or not.

Mr. Noel. Did he say any thing about continuing in the Highlands ? or for what Purpose ?

D. Campbell. I cannot charge my Memory with that Circumstance.

Mr. Noel. Did you hear my Lord Lovat say any thing about his coming to London after he was taken ?

D. Campbell. Yes.

Mr. Noel. What did he say upon that Occasion ?

D. Campbell. In the Course of Conversation, sometimes my Lord said, He was in hopes that he might get Friends that would befriend him ; and he observed, that his being dealt mildly with, might be of more Service to the Government than rigorous Methods ; and that it would be of more Service, if they would spare him, than treating him with Rigour could possibly be.

Mr. Noel. Did he say in what respect it might be of more Service ?

D. Campbell. I do not remember that.

Mr. Noel. Did he mention particularly in what he could be of Service? or no?

D. Campbell. I do not remember any Particulars farther, than that the general Tenor of his Conversation seemed to imply, that he could be of Service to the Government, by letting them into the Politicks of the Rebels, or some of their Counsels, or to that Purpose; I cannot be positive to any particular Thing.

Mr. Noel. My Lords, The Witness says, that he was sent for down from the Deck on board the *Furnace*, as he understood, at the Request of my Lord *Lovat*, to be present when the Box was opened; and that accordingly he went down for that Purpose: Now I desire he may inform your Lordships, whether there were, or were not, many Papers in that Strong Box.

D. Campbell. It seemed to be a Bundle containing from about 25 to 30 Letters.

Mr. Noel. After you had read a Number of them, before you came to the Letter from his Son that you have mentioned, did my Lord *Lovat* say any thing about the Contents of the Papers?

D. Campbell. He said, either before or after I had the Letters, directing his Discourse to the Company, that we should find nothing in those Letters that would shew any Correspondence of his with the Rebels.

Mr. Noel. Did he drop any thing to that Purpose during your reading the Papers?

D. Campbell. I cannot say whether he did, or not.

Mr. Noel. Was the Paper you have spoken of at the Bottom?

D. Campbell. I took them all up in Course as they lay; and that was the last, or last but one.

Mr. Noel. What did you say upon having read that Paper?

D. Campbell. I said, that he had better not have had that Paper there; and he said, I was right.

Mr. Noel. What did my Lord *Lovat* say, or do, upon that Occasion?

D. Campbell. I remember nothing farther than what I have expressed.

Lord Halifax. My Lords, This Witness has told your Lordships, that, among the Letters which were in this Box, there was a Letter found from my Lord *Lovat*'s Son to him; which makes me imagine there was some treasonable Correspondence in that Letter: I therefore pray, he may acquaint your Lordships what the Purport and Tenor of that Letter was.

Sir John Strange. My Lords, We shall produce the Letter in the Course of our written Evidence; and therefore we do not ask him any Questions about it now.

Sir John Strange. When you said, that you believed the Letter had better not have been there, did my Lord *Lovat* say any thing to his Servant how such a Mistake happened?

D. Campbell. I do not recollect any such Circumstance; it might have been, but I do not remember any such thing.

Sir John Strange. Do you recollect, that he said any thing to his Secretary, or any of his People, about him?

D. Campbell. No.

Sir John Strange. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Would you ask this Witness any Questions?

Lord Lovat. Was you present when I surrendered my Sword in the Desert of *Morar*?

D. Campbell. I was not present; I was not ashore all Day, came on board the Night before, and therefore could not see my Lord *Lovat* surrender his Sword.

Lord Lovat. Do you know whether it was to Captain *Dugal Campbell*, of the *Argyllshire* Militia, that I surrendered my Sword?

D. Campbell. Captain *Campbell* was upon the Command; he is a Relation of mine; when he came on board, he said he had taken my Lord *Lovat* Prisoner. I heard Captain *Fergusson*'s Boatswain mention how they came up with my Lord.

Lord Lovat. Did Captain *Fergusson* threaten Captain *Campbell* for not delivering up my Strong Box; and did they not fall to Loggerheads about it?

D. Campbell. Captain *Fergusson* never said any thing about it; Captain *Campbell* did; but I do not apprehend they were at Loggerheads. Captain *Campbell* told me, that when he had got Lord *Lovat*, and the Box, he did not know where Captain *Fergusson* was; he went a different Rout; and afterwards Captain *Campbell*'s Servant gave Captain *Fergusson* the Box, and desired him not to part with it.

Lord Lovat. Did you see my Brother-in-Law, Major General *Campbell*, in Captain *Fergusson*'s Ship, when it lay there?

D. Campbell. I did not see him, because I went just before to another Ship.

Lord Lovat. Do you know that I delivered up my Strong Box to General *Campbell*, and said it would be as safe as in my own Hands?

D. Campbell. No; I was not there.

Lord

Lord Lovat. Do you know whether General *Campbell* and Captain *Fergusson* went themselves into the Cabin, to examine my Strong Box, and staid there two Hours?

D. Campbell. I don't know it; but I had an Inventory of the Things in the Box; and whoever had the Box, the Things contained in it were in the Inventory.

Mr. Attorney General. I desire to know, if the Strong Box was not opened by a Key delivered by my Lord *Lovat*, just at the Time it was opened?

D. Campbell. Yes, it was; and the Things put in the same Order they were before, and the Key delivered back to my Lord *Lovat*.

Mr. Attorney General. Had it ever been opened before that Time?

D. Campbell. This was the first Opening of it.

Mr. Attorney General. At the Time you took the Inventory, was not that the first Opening of the Box? And was not the Key delivered by my Lord *Lovat*?

D. Campbell. Yes.

[Then the Witnesses, by Direction of the Lord High Steward, withdrew.

Mr. Attorney General. My Lords, We will now call Sir *Everard Fawkener*.

Lord High Steward. My Lord *Lovat*, Have you any Objection to Sir *Everard Fawkener*?

Lord Lovat. Not any.

Sir Everard Fawkener sworn.

Mr. Attorney General. I desire, Sir *Everard Fawkener*, that you will please to give an Account to my Lords of the Conversation you had with Lord *Lovat*, after he was taken Prisoner.

Sir Everard Fawkener. After Lord *Lovat* was taken and brought Prisoner to Fort *Augustus*, and lodged in an Apartment of the Fort there, his Royal Highness the Duke ordered me to go and visit him; not with any Design to examine him particularly; for his Highness said, he intended to send him to *London*, there to receive what the Laws of his Country should order; but that as, in all Appearance, he had been a great Cause of the Mischiefs brought upon his Country, this Visit was designed to see whether he would discover any thing that might tend to bring those Mischiefs to a more speedy End. When I went to him, I thought it would be the most candid Way of Proceeding to inform him who I was; and accordingly I told him, that I had the Honour to be Secretary to his Royal Highness the Duke: My Lord *Lovat* said, that, notwithstanding the Circumstances he then appeared in, he had formerly rendered great Services to the Government, and the present Royal Family; and that he had received several Marks of the late King's Favour: And my Lord imputed to Marshal *Wade* the Cause of his present Misfortunes; which was, the taking away his Company; which he expressed his Resentment at, by saying, that if *Kouli Kan* had landed in *Britain*, he should have thought that would have justified his Lordship to have joined him with his Clan; and he would have done it. He said further, that he had been in a Condition to render Service to the Government, and that he might be of future Service to the Government; and that Mercy, as well as Justice, belonged to Sovereigns; and that, if his Majesty would extend Mercy towards him, he would shew his Loyalty, and deserve more than Twenty such Heads as his were worth. I would have entered more particularly into the Services that he would render the Government, but that I found, by his own Discourse, that the Service he meant was no more, than to bring his Clan for the future into the Service of the Government, instead of employing them against it. He said, the World allowed him some Abilities, and he would apply them to that Service; and concluded with this, saying, He was

— *in utrumque paratus*
Seu versare dolos, seu certe occumbere morti.

Mr. Attorney General. Can you charge your Memory with any particular Expressions he made use of?

Sir Everard Fawkener. I cannot say whether what I have said was the Subject of one or two Conversations; but he used to send for me frequently, and I remember there was one thing he would seem to make reconcileable, which was, his Principle of Loyalty to the Family of the *Stuarts*, and the Services done for the late King and the Royal Family.

Mr. Attorney General. What were the Services he said he could render the Government?

Sir Everard Fawkener. Only that he would employ the *Frasers* in the Service of the Government, instead of employing them against it, and employ his Talents in the Support of it.

Mr. Attorney General. Did my Lord *Lovat* confess or deny that he had been concerned in the Rebellion?

Sir Everard Fawkener. He did not seem to me to take the Trouble to deny it, but rather acquiesced in it that he had.

Mr. Attorney General. Did he ever say he was not concerned in it?

Sir Everard Fawkener. I cannot say he ever did.

Mr. Attorney General. My Lords, We have done with this Witness.

Lord High Steward. My Lord *Lovat*, Would you ask *Sir Everard Fawkener* any Questions?

Lord Lovat. No; only that I am *Sir Everard's* humble Servant, and wish him Joy of his young Lady.

Mr. Attorney General. My Lords, We have now done with calling our *Viva Voce* Evidence, any further than what will be necessary to prove the written Evidence which we shall produce; and therefore what we propose now, is, to call a Witness, to prove some Letters, some of them of the Signature and Hand-writing, and all of the Dictating, of the noble Lord at the Bar.

Sir William Yonge. My Lords, I submit it to your Lordships, if it would not be better to have the Whole of the written Evidence together, rather than to go on To-night with Part of it only: We submit it intirely to your Lordships, whether we shall go on now or not.

Lord Lovat. And I hope your Lordships will remember poor *Lovat*, who cannot stand; and that you will give a little Respite till *Monday*, or order his Funeral.

Lord High Steward. Gentlemen of the House of Commons, Is your written Evidence likely to be long?

Mr. Attorney General. My Lords, It will be very long.

Lord High Steward. Will it take up more than one Day?

Mr. Attorney General. My Lords, It is difficult to say, with Certainty, how long it will take up: There is a great deal of written Evidence to lay before your Lordships; and there must be the Summing up of the whole Evidence by one of the Managers.

Lords. Go on; go on.

Sir William Yonge. My Lords, Then we will beg Leave to call *Robert Frazer*.

He was sworn and examined on this Tryal before, and was my Lord Lovat's Secretary.

Robert Frazer called into Court.

Sir William Yonge. Look upon that Letter (*shewing the Witness a Letter*), and tell my Lords of whose Hand-writing it is?

R. Frazer. 'Tis my own.

Sir William Yonge. By whose Order did you write that Letter?

R. Frazer. By Order of my Lord *Lovat*.

Sir William Yonge. Did my Lord *Lovat* dictate it to you? or not?

R. Frazer. My Lord *Lovat* dictated every Word of it.

Sir William Yonge. Look upon the Signature of the Letter, and tell my Lords of whose Hand-writing it is?

R. Frazer. 'Tis my Lord *Lovat's*.

Sir William Yonge. Did you, or did you not, see him sign it?

R. Frazer. I saw him sign it.

Sir William Yonge. As the Letter is not addressed to any body, please to inform their Lordships to whom it was intended to be sent?

R. Frazer. It was intended to be sent to *John Murray* of *Broughton*, the Pretender's Secretary.

Sir William Yonge. Was it sent from *Castle-Downey*?

R. Frazer. No; not from *Castle-Downey*.

Lord High Steward. How do you know this Letter was intended to be sent to *Mr. Murray*?

R. Frazer. My Lord *Lovat* told me so.

Sir William Yonge. Was the Letter sent at any time?

R. Frazer. Yes; it was sent from *Gortuleg*.

Sir William Yonge. When was it sent?

R. Frazer. After my Lord *Lovat* had made his Escape from Lord *Loudon*.

Sir William Yonge. How long was that after the Letter was writ?

R. Frazer. It was writ in *December*, and sent in *January*.

Then the Letter (marked N° III.) signed Lovat, was delivered in, and read by the Clerk at the Table, as follows:

M m

Honorable and Dear Sir,

I Received, with vast Pleasure, the Honour of your Letter of the 31st October, by the Bearer, who has the Honour to be known to you. He is my Relation, and was my Secretary for several Years; and he is now Captain-Lieutenant in the First Battallion of my Son's Regiment. He gave me great Joy in letting me know at this time, as well as when he came from *Edinburgh* some Weeks ago, that you was in perfect Health, notwithstanding of the extream Fatigue, and constant Hurry, that the essential Affairs of the Royal Prince keeps you in Day and Night.

I do assure you, dear Sir, that no Man in *Scotland* is better pleased to hear of the Continuation of your Health, and the Prosperity of your Person in every Shape, than I am, as I always found you a worthy Gentleman, full of good Sense and Politeness, full of true Loyalty and Valour, and faithfully zealous for the Interest of the Royal Family, and, in the mean time, mighty civill and oblidging to me, when I had the Honour to see on the Subject of the King's Affairs, which never was so well taken care of, as since they were in your Hands: I woud be therefore a most stupid, worthless Animall, if I had not a most grateful Sense of your Goodness and Friendship towards me: So, dear Sir, you may beleive me, when I assure you, that my Heart and Soul is full of Thanks and Gratitude for the great Marks of Freindship, that I had the Honour to receive from you; and I have laid my positive Commands upon my Son to love, honour, and respect you as my best Freind, and to make you his Patron at the Prince's Court, and to do nothing that is essentiall without your Advice; and he will find it his own Interest to observe exactly my Instructions on that Head.

I solemnly protest, dear Sir, That it was the greatest Greif of my Life, that my Indisposition and severe Sicknes kept me from going South to my dear brave Prince, and never parting with him while I was able to stand, but venture my old Bones, with Pleasure, in his Service, and before his Eyes, while I had the least Breath within me: But, when I found, that by Pains and Weakness in my Knees, I lost the Use of my Limbs, I resolved to give a Proof of my singular Zeal for my dear Master the King, and for my brave glorious Prince, that, I truly beleive, few or none in *Scotland* woud do, but myself. I send my eldest Son, the Hopes of my Family, and the Darling of my Life, a Youth about Nineteen Year old, who was just going abroad to finish his Studys and Education, after after having learned, with Applause, what is taught in our *Scots* Universitys, and was graduate Master of Arts. But, instead of sending him abroad to compleat his Education, I have sent him to venture the last Drop of his Blood in the glorious Prince's Service; and, as he is extreamly beloved, and the Darling of the Clan, all the Gentlemen of my Name and Clan (which, I thank God! are numerous, and look well, and always beleived to be as stout as their Neighbours) are gone with him.

There is not the Head of ane old Family or Trybe of my Name and Clan in this Country, that have staid at home; only a few old Gentlemen, infirm like myself, that were not able to travell: And, as my Son is adored by the common People of my Clan, he has brought along with him a considerable Number of the best of them, in Two handsome Battallions; and, if they were as well armed and equipped as I could wish, they would look as well as any Clan that went South this Year; for, as I possess the largest and best Estate in the Shire, I have a great Number of Commons on my Property, about 1500 good and bad; and that which is very singular, is, that, in that 1500, there is not 30 but what are *Frasers*; which no Chief in the *Highlands* can say of his Clan, but myself; for most of them are mixed with Men of all the other Clans.

I flatter myself, that my Son will behave well at the Head of my People; and I am sure every one of them will be ready to live and dye with him; and, if he lives, I hope he will be ane useful Servant to the King and Prince, and ane Honour to his Family; for he has very good Parts and Learning for his Age: And since I am like to make my Exit very soon out of this troublesome World, and that, I thank God! I have served my King faithfully from my Infancy till now; and that it is well known by all the Gentlemen in the King's Interest in the North, that, for many Years past, I was the Life and Spirit of the King's Affairs in these Countrys; and as I made it my only Business to encourage and keep up the Hearts of the King's Freinds, it was very fatiguing and troublesome to me, and vastly expensive, by my extravagant Housekeeping, and giving away often a little Money to the King's Freinds that wanted it much, and from whom I never expect any Payment; and now I give the last Prooff of my uncommon and unalterable Zeal for my dear Master the King, in sending what is dearest to me in the World, my eldest Son, and my Clan, to venture their Lives with the glorious Prince Royal, and under his Eyes.

As it would be ill Manners to trouble you in a Letter with some essential Things that concerns my own Person and Family, I have entrusted my Cousin, the Bearer, to give you a true Account of what I have to say ; which, I hope, you will receive with your ordinary Goodness, and Freindship for me. And I earnestly entreat, after you consider what I have to say, that you represent it to the Prince in the kindly and freindly Manner you always behaved to me : And, as I ask nothing of his Royal Highness, that is either expensive, dishonourable, or disadvantageous, to his Royal Highness, and to his Interest, I am convinced, that his Royal Highness will give me a just and gracious Answer ; which will for ever fix me, my Posterity, and all concerned in me, to his Royal Highness Person and Family : And I can say without Vanity, that there is not one Family in the North of *Scotland* more capable to serve him, and his Royal Family, than mine, nor non that has deserved it more of the Royal Family of *Stuarts*, since their Accession to the Throne, than the *Frasers*, and the Lords of *Lovat*. They likewise signalized themselves with Honor and Valour for King *Robert Bruce*, and his Offspring : And it is likewise singular, that no Lord *Lovat*, of Twenty-four that have been of my Family, ever fought or voted against their King.

I beg you Ten thousand Pardons for this Digression ; but, as I look upon you as my best Freind, I thought proper to let you know this under my own Hand ; which, I hope, you will forgive, and the Tedioufness of this Letter, and beleive that I am, as much as any Man alive, with the outmost Esteem and Respect, and with a most sincere and constant Gratitude, while there is Life in me,

Honoble and Dear Sir,

Your most obedient, most oblidge, and most affectionate,
faithful, humble Servant,

LOVAT.

Mr. Attorney General. This Letter will be proved to have been received by *John Murray* of *Broughton*. My Lords, he is not now here ; and therefore we do not call him to that Particular : But the next Letter we shall produce, is a Letter written by my Lord *Lovat* to the Pretender's Son. The Letter itself will appear to be torn in some Parts, which will, in a small Degree, mangle the Sense ; but that will be supplied by a Copy of the same Letter, written at the same time, by the same Hand, and by the Order of my Lord *Lovat*, which we shall produce to your Lordships.

Sir William Yonge, producing the Letter to the Witness, asked,

Sir William Yonge. Of whose Hand-writing is that ?

R. Fraser. It is mine.

Sir William Yonge. By whose Order did you write it ?

R. Fraser. By my Lord *Lovat*'s Order.

Sir William Yonge. Was it dictated to you by him ?

R. Fraser. Every Word of it.

Sir William Yonge. Was the Letter signed by my Lord ?

R. Fraser. It was.

Sir William Yonge. Is the Signature there ? Or, is it torn off ?

R. Fraser. It is torn off.

Sir William Yonge. Look upon that Copy of a Letter, and tell my Lords whom that was written by ?

R. Fraser. By me.

Sir William Yonge. By whose Order ?

R. Fraser. By my Lord *Lovat*'s Order.

Sir William Yonge. For what End or Purpose was it made ?

R. Fraser. It was made for a Copy to keep.

Sir William Yonge. Is that a Copy of the other Letter which you were just now shewn ?

R. Fraser. That is a Copy, that was drawn from the Principal.

Sir William Yonge. Was the Original sent at any time ?

R. Fraser. Yes ; it was.

Sir William Yonge. When was it sent ?

R. Fraser. It was sent from *Gortuleg* at the same time the Letter to *Mr. Murray* was sent.

Sir William Yonge. Can you give an Account how the Signature of the original Letter came to be torn off ?

R. Fraser. I cannot.

Mr. Attorney General. My Lords, There is some Part of the Signature remaining : The Top of the *L*, and the Top of the *t*, remain.

My Lords, We desire the Letter may be read.

Sir

Sir William Yonge. Deliver both the Letter, and the Copy, to explain it.
 Lord High Steward. Was the Signature originally there?
 R. Frazer. Yes.
 Lord High Steward. You say my Lord Lovat dictated it?
 R. Frazer. Yes.
 Lord High Steward. Did he sign it?
 R. Frazer. Yes.
 Lord High Steward. Was the Name intire upon it, when it was sent away from Gortuleg?
 R. Frazer. Yes; it was.
 Lord High Steward. When was it sent away from Gortuleg?
 R. Frazer. At the same time with the former Letter, that has been read.
 Lord High Steward. When was that sent?
 R. Frazer. In January.
 Lord High Steward. By whom was it sent?
 R. Frazer. By a Tenant of my Lord Lovat's; one of his *Strathbarrick* Men.
 Lord High Steward. My Lords, As both the Letter and the Copy have been proved, it will be proper for your Lordships first to hear the Original read, imperfect as it is, and then the Copy.
 Clerk read the Letter N^o. I. dated Beaufort, November, 1745, and then read the Copy of the same Letter, N^o. II.

N^o. I.

Most Royal Prince,
 (a) I Reckon it the greatest Misfortune of my Life, and which has occasioned me more Greif and Sorrow, than any cross Accident that ever happened to me, that my long Indisposition, and severe Pains and Tortures, . . . suffered for a long time, deprived me of the vast . . . Honour I would have had in kissing your . . . Hands, and in venturing my old . . . before your Eyes. And, as my dear Masters . . .
 . . . ereigns, your Royal Father and Grandfather . . . d a more faithful and zealous
 Subject than . . . een to their Royal Persons and Interests, since I . . . d the Use of my Reason; so nothing in this World could give me so much Pleasure as to signalize myself, and end my Days, in the Service of your Royal Highness, where I would not be useless, having been bred to the War by the best Masters in *Europe* these Fifty Years past: But now, finding myself a perfect Invalid, not able to mount a Horseback, nor to walk Half a Mile, and consequently not able to exert myself either as a Soldier, or as a General Officer, which my dear Master, your Royal Father, was pleased to make me above Forty Years ago.
 Finding myself in this unhappy, cruell Situation, of not being able to pay my Duty to your Royal Highness in every respect, I did resolve to give your Royal Highness the next Mark of my greatest Zeal that I am capable of, if it was to gain your Royal Highness Ten Kingdoms; and that is, to send my eldest Son, the Bearer of this Letter, and the great Hopes of my Family, and the Darling of my Soul, to venture his Life, . . . his young Person, in your
 nefs Service: . . . wardness to serve
 Royal High . . . : And I hope, that his great Zeal and For . . . your
 ou please to command
 Royal Highness, in every Shape y . . . him, will be a Proof, that he is my true Son.

the principal
 I have sent along with him all . . . Gentlemen, and Heads of Families, of my
 Clan, with . . . s own Choice:
 . . . Eight hundred of my common People of hi . . . : And it is singu-

(a) N. B. The Chasms in this Letter, which were occasioned by tearing off the Signature, are supplied from N^o II. the Copy of it.

Thirteen
lar in my Clan, that, of or Fourteen hundred Men that are on my Proper . . . ,
they are all *Frasers* ; and there is not Twenty of them of any other Clan. Both History and
Tradition tell us, that the Clan of the *Frasers* always behaved well ; and now, when they have
a most glorious and brave Prince at their Head, I truly rather hear of my Son's Death, and of
all my Clan that went along with him, than to hear of their Misbehaviour, which wou'd soon
put my gray Head with Sorrow to the Grave ; but I do not in the least fear it. I therefore
deliver my Son, and my Clan, most heartily and frankly to your Royal Highness, to do
with them what in your Royal Highness Goodness and Pleasure you think fit.

I hope there is none of your Royal Highness Friends, or Servants, that has come to this
Country, but will do me the Justice to declare, that I am, and always have been, the
most zealous and most active Partizan that your Royal Highness has in the North of Scot-
land ; and wn I did but my Duty.

Manners,
This Letter is already longer, than, in good , I ought to have troubled your
with : But before
Royal Highness as I have a great many essential Things to lay your Royal
Highness, I will make a Memorial of them, and give them in to my good Friend Mr. . . .
ray, ma
your Royal Highness Secretary of State, that he . . . y represent to your Royal
Highness what is in . . . , when you are at Leisure.

I pray God preserve your Royal Highness Person, and give you Success and Glory in
all your Enterprizes, as you have had hitherto ; and I am, while I live, ready to loose the
last Drop of my Blood, and with as great Zeal as any Man on Earth,

Most Glorious and most Royal Prince,

Your Royal Highness most constant and faithful Slave,

Beaufort, Nov.

1745.

* * * *

Then the Copy of the above Letter was read.

Lord High Steward. By whom was this Letter intended to have been sent to the young
Pretender ?

R. Fraser. It was intended to have been sent by the Master of *Lovat*.

Lord High Steward. How long had you this Copy in your Hands ?

R. Fraser. I had it in my Hands for some time after it was written : It lay in my Desk.

Lord High Steward. How long had you it in your Hands ?

R. Fraser. I cannot be positive.

Lord High Steward. To whom did you deliver the Copy ?

R. Fraser. I do not know to whom I delivered the Copy.

Mr. Attorney General. My Lords, Tho' it is impossible for your Lordships to doubt who
is meant by the Words *Most glorious Prince*, and *Your Royal Highness*, in the Letter, yet, if
your Lordships please, this Witness may be asked, as he wrote the Letter by my Lord's
dictating, Who was meant by these Words ?

R. Fraser. I took it to mean the Pretender's Son.

Sir William Yonge. My Lords, The next Letter we beg Leave to produce, is another
Letter that was intended to be sent to the Master of *Lovat*.

Look upon that Letter [*shewing the Letter to the Witness*], and tell my Lords of whose
Hand-writing it is ?

R. Fraser. It is mine.

Sir William Yonge. By whose Order did you write it ?

R. Fraser. By my Lord *Lovat*'s.

Sir William Yonge. Was it dictated by Lord *Lovat* to you ?

R. Fraser. Every Word of it.

Sir William Yonge. Was it signed by my Lord *Lovat*, when it was written ?

R. Fraser. I cannot be positive whether it was signed, or not.

Sir William Yonge. Recollect, if you can, whether it was signed, or not.

R. Frazer. To the best of my Remembrance, it was signed. It was intended to be sent, with the other Letters, to the Laird of *Locheil*, who was then at *Perth*. It was written by me, and dictated by my Lord *Lovat* every Word.

Sir William Yonge. Can you take upon you to say, that it was signed, or not?

R. Frazer. To the best of my Knowledge, it was.

Sir William Yonge. Was that Letter sent at the same time with the others?

R. Frazer. Yes; it was.

Sir William Yonge. At the same time, and by the same Person?

R. Frazer. Yes.

Sir William Yonge. By whose Orders were they sent?

R. Frazer. By my Lord *Lovat*'s.

Sir William Yonge. What was you ordered to do with these Four Letters?

R. Frazer. To put them up in a Packet; which I did, and directed them to the Master of *Lovat*.

Sir William Yonge. By whom was you ordered to do it?

R. Frazer. By my Lord *Lovat*.

Sir William Yonge. Were there Three or Four Letters in all?

R. Frazer. There were Four Letters.

Lord High Steward. Was this Letter sent in the same Packet with the others?

R. Frazer. Yes; it was.

Then the Letter N^o IV. was delivered in at the Table, and read by the Clerk, as follows:

N^o IV.

My Dear Laird of *Locheil*,

I Could hardly beleive ane Angell from Heaven, if he had told me, that *Donald* Laird of *Locheil* wou'd forget *Simon* Lord *Lovat*, as you have done: And this is the more surprizing, that you cannot say, nor justly think, that, in one Article of my Life, I fail'd to shew my singular Affection and Respect for my dear Cousin *Locheil*; but, on the contrary, gave you all the Marks of Freindship in my Power, or that I was capable off; and yet, my dear Cousin, since ever you join'd the Prince, you never did me the Honour to write me one Scrape of a Pen, notwithstanding of the strict Union and Freindship that we always lived in, and our constant Correspondence. I solemnly protest, that I know not what to attribute this Sillence to; since I cannot accuse myself of any thing that deserves it at your Hands: For you never saw me fail in my Loyalty to the King, or in my Affection and Freindship towards you; nor never will, tho' you should continue as unkind as you are. I therefore beg of you, my dear Cousin, to let me hear from you; and be so good as to comfort my languishing Soul, and drooping Spirits, by assuring me, that you are the same affectionate Laird of *Locheil* to me that ever you was: I truly never had so much Need of your Comfort and Assistance as at this Time; for I am in vast Distress of Body and Mind.

The base and treacherous Behaviour of our wretched Cousin the Laird of *MacLeod* has almost cost me my Life already: The Night before he took his Journey to the Isle of *Sky* from this House, sitting by me, he looked up seriously, and swore to me, that as he should answer to God, and wished that God might never have Mercy on him, and that he might never enter into the Kingdom of Heaven, but that his Bones might rott on Earth, be burnt, and his Ashes blown up in the Air, if he did not come with all Speed imaginable, and with all his Men that was already prepared, and come and join my Son, and the Clan *Frazer*, and march South with them to the Prince's Service, wherever he was. He swore the same terrible Oaths and Imprecations next Day to my Son, and to your faithful Servant *Gortuleg*: And if he had kept his Oaths and Word, I had so mannaged this Part of the North, that about 6000 Men had march'd South to the Prince's Assistance; which I thought wou'd much encourage his own Loyal Party, and frighten the *English* to his Obedience. But when I got *MacLeod*'s Letter about Twelve Days after, in which he told me, that, after deliberating fully with his Neighbour *Sir Alexander*, and weighing the Arguments on both Sides, he, and his Neighbour, had resolved to stay at home, and not to trouble the Government.

In reading this Line, I had almost fainted, and my Body swell'd with Anger and Vexation; so that I could not sleep nor eat for several Days; and I am yet far from being recovered, for I have a severe Stich and Pain in my Left-side, which keeps me from my Night's Rest, and has intirely taken away my Appetite; so that I beleive the Treachery of that unnatural, ungrateful, and wicked Man, will be the Occasion of my Death very soon: But before I die, I resolved, if possible, to give such a Mark of my Zeal for my good Master the King, and for the glorious brave Royal Prince his Son, that I beleive few in *Scotland* would do but myself.

I send

I send my eldest Son, who is the great Hopes of my Family, and the Darling of my Life and Soul, to venture his Life and Blood in the brave Royal Prince's Service; and he has all the Gentlemen of my Clan with him, except a few old Gentlemen that are not able to travell. He has *Stray*, *Killbokie*, and *Religg*, the principal Heads of Families of the *Frasers* this Side of *Lochness*; and he has *Foyers*, *Ferraline*, and *Leale-Garth*, as the principal Heads of the Familys in *Stratherrick* and *Abertorff*; and he has certainly taken with him the Flour of my Clap. I pray God preserve him and them, and influence them to fight gallantly before the brave Prince's Eyes; for I had much rather hear of my Son's Death, and of my Clans, than that they should mis-behave; since History cannot shew ane Occasion in which the *Frasers* misbehaved; for, I thank God, they were always known to be brave.

Now, my dear Cousin *Lockeil*, you cannot but think it just and reasonable, that I deliver my Son to your Care, in every respect; and that your Clan, *Cluny's*, and mine, should be most unite, and live together like Brethren; and that the Quarrell of the one should be the Quarrell of the other, according to our mutual Engagements by Word and Write; in which, I hope, we will never fail. The treacherous Behaviour of the monstrous Laird of *Mac-Leod* shoud put all Relations and intimate Freinds on their Guard not to fail to one another; for he has, by his Treachery and unnatural Behaviour, fixed upon himself the most infamous Character of any Man on Earth: That Traitor, instead of coming to this House, where he was always Mr. to join my Son, according to his Promise, has marched the other Side of *Kessock* this Day with 400 of his chosen Men and Gentlemen: I beleive that, hearing that my Son's Regiment was in Arms in this Country, he was affraid to pass through it, though it's the best Way to *Inverness*. His Fears was groundless; for I would not hurt my Mother's Kin, though it was in my Power: But if my Son saw the Laird, I believe he would shott him, or bring him Prisoner to the Prince, because of his abominable Breach of Oath and Promises to him.

When he sent a little sneaking Gentleman here with his treacherous Letters, my Son and *Gortulegg* made two bitter Answers to them. When the little Gentleman sought my Answer, I told him to tell his Cheif, that he was a Traitor to the King, and a Murderer of my Son and me, which he might be sure I would resent, if I was able; but that I would never black Paper to a Man that had so basely betray'd me; that since he went to the Devill, I would leave him there, and have no more to do with him.

Honest *Gortuleg*, who made up a Company to go with my Son, and who would be most usefull to him, fell very ill, Eight Days ago, of his old Distemper, ane Inflammation in the Kidneys, of which he had almost dyd some Years ago in *Lochaber*, and many times since. He lies in the next Room to me; we are both much indisposed, and Invalids. He joins me in assuring you, and my dear Cousin the Lady *Lockeil*, and all your lovely Family, of our most affectionate humble Duty, and best Respects.

Since you are justly the Royal Prince's great Favourite, I hope you'll be so kind, dear Cousin, as make my Court to his Royal Highness; for tho' it is my Misfortune not to be able to follow him wherever he goes (which would be the Delight and Honor of my Life), yet you can freely assure his Royal Highness, that he has not a more faithfull and zealous Partizan in *Scotland*: And tho' I am not able to mount a Horseback, or travell a Foot, yet I have done his Royal Highness more Service than any one of my own Rank in *Brittain*; for I keep Life and Spirits in his Affairs more than any Man in the North: And tho' the President tells me plainly, that I have forfeit Life and Fortune, and that my Person is not safe in this House; yet I am resolved to live and die with Courage and Resolution in my King and Royal Prince's Service; but no Death that they can invent can lessen my Zeal, or fright me from my Duty.

I beg, my dear Cousin, you may acquaint me what you know of our dear Cousin Mr. *William Drummond* of *Bochaldy*; for I can get no certain Accounts of him, which vexes my Soul and Heart; for he was one of the Men in the World that I loved most, and that loved me most.

I beg you ten thousand Pardons for this very long Letter; but it is to punish you for your Sillence, and to convince that I am always the same Man towards you and yours.

I intreat you make my most affectionate Compliments to my dear Son-in-law *Cluny*.—I am perswaded he will do Honor to all concerned in him.—I am convinced that you will easily beleive, that I am, as much as any Man alive, with unalterable Esteem, Attachment, and Respect,

My dear Laird of *Lockeil*,

Beaufort, Nov'

The Signature of this Letter was torn.

Mr. Attorney General. My Lords, There was another Letter, which we take to be One of the Four which was sent in that Packet; it is [not a very material one; and we shall produce it to your Lordships, rather to connect the Evidence of this Witness, than for any thing contained in it. It is a Letter to the late Marquis of *Tullibardine*, by the Name of Duke of *Atbol*.

Sir William Yonge producing the Letter, the Signature to which, and Part of the Date, is torn off.

Sir William Yonge. Of whose Hand-writing is that Letter?

R. Frazer. My own.

Sir William Yonge. By whose Directions did you write it?

R. Frazer. By my Lord *Lovat*'s.

Sir William Yonge. Did he dictate it to you?

R. Frazer. Every Word of it.

Sir William Yonge. Was the Letter signed by Lord *Lovat*?

R. Frazer. Yes, it was.

Sir William Yonge. Did you see my Lord *Lovat* sign it?

R. Frazer. Yes, I did.

Sir William Yonge. Is the Signature torn off?

R. Frazer. Yes.

Sir William Yonge. Was that Letter sent with the others?

R. Frazer. It was sent with the former that have been read.

Sir William Yonge. In the same Packet?

R. Frazer. Yes.

Sir William Yonge. Which was directed to the Master of *Lovat*?

R. Frazer. Yes.

Sir William Yonge. For whom did my Lord *Lovat* say that Letter was designed.

R. Frazer. For the Duke of *Atbol*.

Sir William Yonge. Who did he mean by that?

R. Frazer. The Marquis of *Tullibardine*, the Duke of *Atbol* that was abroad.

Sir William Yonge. By whose Order did you send that Letter?

R. Frazer. By my Lord *Lovat*'s Orders.

Then the Letter, N° V. dated 5th December, 1745, was delivered at the Table, and read by the Clerk, as follows:

N° V.

My good Lord Duke,

I Had the Honour to receive two very ob . . . * from your Grace; for which I give you * . . . nks; and I can freely assure your Grace * . . . nefs and Civilitys towards me, have had * . . . preffion upon me, that I will remember * . . . ays of my Life with Gratitude and Thankf . . . And your Grace shall always find me most ready to serve your Person and Family.

I had the Honour to return Answers to both your Grace's Letters; one by Mr. *MacDonell*, and the other by Mr. *MacPherson*, both of the Army; but as the Bearer has the Honour to be your Grace and is my Relation, and one whom I trust as much as any of my Family, I have put it upon him to acquaint your Grace of every thing that happens in this Country worth your while to hear, since I had the Honour to receive your Grace's Letters; which I am sure he will do very exactly and very faithfully; for he knows every thing that is done in this Country, and does not want Understanding.

I humbly beg the Continuance of your Grace's Goodness and Civilitys towards me; and be so just as to beleive that I will remain, while I live, with the utmost Esteem, Attachment, and Respect,

My good Lord Duke,

Your Grace's most obedient, most obliged,

Beaufort, December 5.

1745.

and most affectionate faithful humble Servant,

The Signature of this Letter was torn.

Mr. Attorney General. My Lords, The next Letter we beg Leave to produce, is a Letter from my Lord *Lovat* to his Son. My Lords, your Lordships have heard already of a Letter which was found in the Box, from the Son to the Father; to which this will appear to be an Answer. The Father's Letter we shall prove in the same Manner as we have done the others; and the Son's will be proved to be of his Hand-writing, and to have been in the Box, at the time it was examined and opened, in the Manner your Lordships have heard.

Mr. Attorney General. Of whose Hand-writing is that Letter? [*Shewing the Letter to the Witnesses.*]

R. Frazer. It is of my own Hand-writing.

Mr. Attorney General. By whose Orders did you write it?

R. Frazer. By my Lord *Lovat*'s.

Mr. Attorney General. Was it signed by my Lord *Lovat*?

R. Frazer. It was not signed.

Mr. Attorney General. Was it ever sent by my Lord *Lovat*'s Order?

R. Frazer. Yes.

Mr. Attorney General. To whom?

R. Frazer. To the Master of *Lovat*.

Mr. Attorney General. Did my Lord *Lovat* dictate it to you?

R. Frazer. Yes, every Word of it.

Mr. Attorney General. Did he order you to send it to the Master of *Lovat*?

R. Frazer. Yes, he did.

Mr. Attorney General. Did Lord *Lovat* frequently order Letters to be wrote, and order his Secretary to send them, without signing them?

R. Frazer. Yes, my Lords, he did.

Mr. Attorney General. Was not that generally to People the most intimate with him?

R. Frazer. Yes, only to his Intimates.

Lord High Steward. Do you know any thing of the sending of this Letter?

R. Frazer. Yes.

Lord High Steward. By whom was it sent?

R. Frazer. By one of my Lord *Lovat*'s Tenants.

Lord High Steward. Was it sent at the same time with the Packet?

R. Frazer. Yes, I believe it was; but I am not positive as to the precise Time it was sent; it was either then, or a little after: If I was to read the Letter, I could tell. [*The Witnesses having looked upon the Letter,*]

Lord High Steward. Does that enable you to recollect when the Letter was sent?

R. Frazer. Yes, my Lords, it does; it was sent at the same time with the other Letters that I spoke of.

Lord High Steward. With that Packet which has been mentioned?

R. Frazer. Yes.

Mr. Attorney General. My Lords, This Letter consists of Two Pieces; one is a Postscript: And therefore we beg Leave to ask this Witness, Whether the Postscript was wrote by him, and dictated by my Lord, and sent at the same time with the other?

R. Frazer. Yes, it was.

Then the Clerk read the Letter, N^o. X. at the Table: Which is as follows.

N^o. X.

My Dearest Child,

I Received the Pleasure of your Letter by the Two Expresses that I sent to you the First of this Month, which you forgot to mark the Date of. It gave me great Joy, my dear *Simon*, to know, that you are in perfect Health, and to see such a handsome Letter of your own Write and Diction. But I must tell you, my dear Child, that you advance severall Things in it, that are not just, and that you cannot support in Reason. In the first place, your Reason for your not writing to me before, since I made my Escape (tho' I accept of your Excuse) was neither just, nor relevant; for it was not to be supposed, that either *Loudoun* or the President would be in Terms with me so soon, after having so signally affronted them: But, in the second place, it is impossible there could be any Terms 'twixt Lord *Loudoun*, the President, and me, that should keep you from writeing to me; no, if I should be attained: So your Reason for not writeing to me was ill-founded. As to your Advice, that comes in immediately after it, in representing to me, That if I could make my Peace with *Loudoun* and the President, and save my Person and Estate, that you would content yourself with a thin Regiment. This Thought, my dear Child, was not at all digested, and intirely ignorant to

my Circumstances: For, in the first place, *Loudoun* can no more save my Person and Estate, than any of your subaltern Officers can; nay, they cannot as much engage to make me free from Prison for any time: So that it would be Madness for me to make any Terms with them, but to speak civilly, and to keep myself out of their Way. But the Fact is, my dear Child, which you forgot, or perhaps that I did not take Pains to inform you of it, That, above Seven Years ago, I was one of those that entered into a formal Association to venture our Lives and Fortunes to restore the King, and his Offspring; and we signed our mutuall Engagements for this Purpose with our Hands and Seals, and sent it to *France* to the Cardinall *de Fleury*, then First Minister of *France*, by the Hands of Mr. *William Drummond* of *Bochaldy*. The Cardinal was so pleased with it, that he shewed our Engagements and Subscriptions to the King his Master, and begged of his Majesty to support us: And the King desired the Cardinall to assure us of his Protection, and that he would us his Assistance and Succours to restore our King. When Mr. *Drummond* acquainted my own King of this Prooff of my Loyalty, and of my constant Zeal for his Person and Interest, from my younger Years till now, gave me evident Prooffs of his Goodness and Favours towards me since, as much as to any Subject. He gave Mr. *Drummond* a Commission to carry to me of Generall of the *Highlanders*, which I have; and severall Letters writt with the King's own Hand, that his Majesty would pay all the Money I paid *Frazerdale*, and his Creditors, for the Estate of *Lovat*; and, last of all, the King was so good as to give such a singular Mark of his Favour to me, and to my Family, that he created me Duke of *Frazer*, &c. and sent me that Patent by *William Drummond*; of which I have an authentick Copy, signed and counter-signed by the King. I would be a Monster of Ingratitude, if this did not attach me to his Majesty more than ever. *Bochaldy*, not thinking it safe to bring the Patent to *Britain*, left it with his Uncle, old *Locheil*, at *Bullen* in *France*, who is now come over with Lord *John Drummond* his Collonell; and I hope he has taken my Patent along with him. I beg you may assure him of my most affectionate Respects. He and I always lived like Two Brothers, and loved one another most dearly. I am sure he still retains affectionate Sentiments for me, as I do for him. I hope he will deliver you my Patent, or a good Account of it. So, my dear Child, since that Association, I made it my Business, where-ever I was, to promote the King's Interest, and to gain and engage faithfull Subjects to serve him; so that I have done more against this Government than would hang Fifty Lords, and forfeit Fifty Estates. I have therefore nothing for it now, but to promote every thing that is for my dear Prince's Honour and Interest: And nothing made me ever speak as much as a fair Word to Lord *Loudoun*, or the President, but to endeavour to save my Person from Prison, since I was not able to go to the Feild, and fight for my King; but, since that is over, and that I have no Safety from Prison, but by being in Hills and Woods, and inaccessible Places, my greatest Desire under the Sun is, that you should make a good and handsome Figure in the Prince's Army; which I wish, and I am as anxious to see done as yourself, and would do as much for it as I would do to save my Life, or keep myself from Prison, which would be soon Death for me: And, as *Loudoun* told me the Day before I made my Escape, That he had as much to say against me as would hang all the *Frasers* of my Clan, I have no Reason to hedge or dissemble with any Man of the Government: So you may assure yourself, that I will put all Irons in the Fire to send you South, all the Men thats engaged with you, and as many more as I can get.

You are quite mistaken, my dear Child, when you think, that your coming North would not engage them to go South. I am sure it would do much more than my Orders; for the Tenth Man would not go this Day at my Desire, that would go first when you began this Work: However, I will be working at them all I can.

I am making up, with all the Haste possible, a Habitation for myself in the House of *Muily*; for that Country is the strongest Hold in *Scotland*; for I will make 100 good Men defend it against all Forces that King *George* can have in *Scotland*. Besides, I ordered a Boat to be made, to carry me out and in to the Isle of *Muily*, when I please; so that it is morally impracticable to attack me in that Country, where I am resolved to go, if possible, next Week, if my Accommodation be finish'd. I keep *Farraline* till I go out of the Country; for, if he went away just now, when the People of the *Aird* are going South, and *Simon*, with some Men, out of this Country, I would be hunted like a Fox, by *Loudoun*, up and down the Country, which perhaps would cost me my Life by Cold and Fatigue; so that I am resolved to stay at my dear *Gortuleg's* House, which I reckon my home as much as if I was at *Castle-Douny*, till my Accommodation is made up at *Glinstrafarer*.

I shall send you my fine Pistols and Furniture, after I cause put them up in a new Portmantua; for it would be a Pity to spoil them; for they will be few so good in the Army. I wonder that you are so long without writing to me; for you may be sure, that it's a Comfort for me to hear often from you; and when I am a Week without hearing, in the Situation that you are in now, you may believe, that I must be very uneasy. Therefore, my

dear *Simon*, for Christ's Sake, don't be a Week without writing to me ; and let me know how all Matters goes with you, and what Situation the Prince's Army is in, and write encouraging News, that may be shewn to your People.

I shall long much for the Return of this Express ; and I ever am, with great Affection,

My dearest *Simon*,

January 14th, 1746.

Your dutyfull Father.

P. S. I send you enclosed the Four Letters that you should have carry'd with you from *Castle-Douny*, which, I hope, you will have Occasion to deliver out of your own Hand. You may tell the P. when you deliver the Letter to him out of your own Hand, That your Father thought it the greatest Misfortune of his Life, that his Sickness and Infirmitys deprived him of the Honour of attending his Royal Highness where-ever he went ; and that his only Comfort now is, that he is capable to give his R. H. such a Mark of his Zeal, as to send you, and his Kindred, to venture your Lives for him ; and that he himself is every Day exposed to be made a Prisoner, and be sent to *London*, to have his Head struck off ; since it can be easily proven against him, that he has done more against the Government than any one of his Rank in *Brittain* ; and hopes, that since, by God's Help, he has made what may be called a miraculous Escape out of the Hands of his cruell Enemy, he will yet expose his Person, with his Sword in his Hand, to serve his R. H. and to do his Duty before his Eyes. You will make your Court and mine to Mr. *Murray*, as much as you can ; he is a very pretty honest Fellow ; and, I am very sure, woud be ready to serve us. And tell young *Lockeill*, and *John Roy*, That I expect that they will make my Court, and yours, to his R. H. in every Shape ; and that they both know the entire Trust and Confidence I put in them.

I hope your Captain-Leivt. is come home by this time ; and it was very right to send him ; for he is certainly one of the prettiest Fellows of your Clan : Give my Service to him, and tell him, That I beg of him to remember all that I spoke to him about my Patent ; and when you talk seriously with him about it, I entreat, that you both put all the Irons in Fire you can, to make the thing succeed. I ask nothing of his Royal Highness, but to give his Countenance, and own publickly what his Father has done for me ; which if he refuse, I most keep to the Oath that I gave before the Duke of *Perth*, the Earl of *Traquair*, *Lockeill*, and other Gentlemen, that first engaged in the present Project with me, that I would never draw my Sword till that was done. And I cannot suppose, or imagin, that his R. H. will make the least Scruple about it, since it is for his own Honour and Interest, as well as for that of my Family. I beg over and over again, my dear Child, to let me hear more often from you : I give you my affectionate Blessing : I pray God, and his Angels, that you may be preserved in Life and Health till you come to my Age. Adieu, my dearest *Simon* !

I need not tell you who the Bearer is ; he is a very honest pretty Fellow ; the natural Head of the *M'Tavishes*. One of the Deserters goes in Company with the Bearer, and the rest of them will be up with you in a Day or two, in Company with *John Dunchea's* Son, and *John, Thomas Gortmore's* Son : They came all to me here ; and were insinuating Complaints against their Officers ; but I would not hear them, as the settling the Matters of your Regiment is your Province, not mine : But I promised them, that you would use them well ; and that they would meet not only with all manner of Justice, but with Clemency, as this was the first Fault : So, I hope, they won't fare the worse, that I recommend them to you. I beg you may dispatch the Bearer, and send a Man with him here.

To the Hon^{ble} the Master of *Lovat*, commanding a Regiment of *Frasers*, at *Perth*, or *Stirling*.

Mr. Attorney General. My Lords, It will now be necessary, that we should give your Lordships an Account of the Son's Letter, and likewise of his Hand-writing ; and therefore beg Leave to ask the Witness, Whether he was acquainted with the Hand-writing of the Master of *Lovat* ?

R. Fraser. Yes ; I have seen him write frequently.

Mr. Attorney General. Is that his Hand-writing, as you believe, or recollect ?

R. Fraser. Yes.

Mr. Attorney General. Have you seen him write ?

R. Fraser. Yes.

Lord

Lord High Steward. Have you often seen him write?

R. Frazer. Yes.

Sir William Yonge. My Lords, We shall now beg Leave to call a Witness to prove where this Letter was found.

Captain Robert Duff called into Court.

Lord High Steward. My Lord Lovat, Has your Lordship any Objection to Captain Duff being sworn as a Witness?

Lord Lovat. No, none at all.

Captain Duff sworn.

Sir William Yonge. My Lords, We beg Leave to ask this Witness, Whether he was present on board the *Furnace*, when my Lord Lovat's strong Box was opened?

Captain Duff. Yes; I was present.

The Letter was produced to the Witness.

Sir William Yonge. Look upon that Paper, and acquaint my Lords, if that Paper was taken out of my Lord Lovat's Strong Box at that time. Look it all over, and be positive, if you can.

Captain Duff looks over the Letter.

Captain Duff. I saw this Letter taken out of Lord Lovat's Strong Box.

Sir William Yonge. Was that Letter taken out in the Presence of the Lord Lovat?

Captain Duff. Yes; it was.

Sir William Yonge. Did my Lord Lovat say any thing about that Letter at that time? Or, did any body else say any thing about it?

Captain Duff. I spoke to my Lord Lovat then, and told him, That I believed that Letter was not designed to fall into my Hands.

Sir William Yonge. Did Lord Lovat make any Answer to you?

Captain Duff. My Lord Lovat made no Answer that I can remember.

Sir John Strange. My Lords, One Witness is enough to prove this Fact; but *Campbell* has also told your Lordships, That he took this Letter out of the Box.

Then the Letter, N° IX. was delivered in at the Table, and read by the Clerk, as follows:

N° IX.

This Letter is directed, To the Right Hon^{ble} Simon Lord Fraser of Lovat.

Stralberick.

My Dr. Papa,

I Received this Day the Pleasure of your Lo^p's Letter of the 1st. I'm very glad you have no Complaints of your Health, notwithstanding the Fatigue you have of late undergone in your Escape from *Inverness*, which gave every body here great Joy. The Reason of my not writing your Lo^p by the Express I sent last was, that I did not know but you might be on Terms with Lord *Loudon* and the President, after making your Escape.

I'm as sorry at my bad Success with the Commanders here, as your Lo^p can be; but there is no Help for it: Nor were they altogether to blame, as the Prince's sudden Return to *Scotland* made it dangerous for them to take any Step of Consequence, without his particular Orders; and these they had in a very few Days after I came to *Perth*; and the Orders were, That they should all march directly to *Sterling*. This, your Lo^p sees, put it out of their Power to march Northward: But, as I saw your Lo^p's Safety, and the King's Interest, required an Expedition to the North, I left no Stone unturned, to bring it about: I therefore, immediately upon hearing of the Prince's being at *Glasgow*, dispatch'd my Captain-Lieutenant (who was of great Use in urging this Matter to the People at *Perth*) to *Glasgow*, to negotiate the Affair there. He is not as yet returned; but I make no Doubt, how soon the Affair at *Sterling* is ended, but a proper Body of Troops . . . ordered to clear the North, and sooner the Art . . . cannot bring it about.

As to your Lo^p's Conduct in the mean time, if I might give an Advice, it would be, not to lose on both Sides: I am far from meaning by this, that you should come to *Perth*; so far from it, that provided your Lo^p could make Conditions for your own Person and Estate, with L^d *Loudon*, and the President, I should be content with a thin Regiment; but, in
case

case they have neither Authority or Inclination to give this, I humbly think you should immediately come to a Resolution, and put it in Execution: For, if your Lo^p's Clan do not all immediately join the Prince, the Cause will soon be found out. I would not much care if your Lo^p's Person and Estate were preserv'd by their Stay; but it will be hard, if it does not better your Condition with the Government, when it must evidently make it worse with the Prince.—I'm sorry for the Opinion your Lo^p has of the Two *Charles's*: I really think you wrong them; but, tho' they had all the Inclination in the World, your Lo^p knows, you always accus'd me of not being very subject to Advice. As to what S^r *Arch^d. Grant* writes of *Inveralachie*, I have all the Reason in the World to believe it is a very great Falshood, and I'm surpriz'd your Lo^p should give any Notice to it. As to my going to *Sterling*, if it was the People at *Perth* that were to command in that Expedition, your Lo^p ry right, and I would be quite a Converter your Argument; but the Prince's positive Orders to us all, his coming there himself to command us, and venture his Person with us, in my Opinion, quite alters the Case.—As to my going North, I know your Lo^p's Influence over your Clan too well, to think, that, where your Orders fail, my Presence will have any Weight. I'm certain your Commands, tho' only intimate by your Officers, will do in a Day more than my Presence wou'd in a Week; and I'm perswaded that your People will come up to a Man, if you order them; and, if you do not, that they will stay at home; so that their coming, or not, entirely depends on your Lo^p. Besides, my going North at this time . . . u'd look a little odd, when the Prince is co *Scotland*, has sent us his positive Orders, let us know, that he himself is to come and command us in Person, that I should, at such a critical Time, run home, would look ill; and the Pretext (as it would be called) of r . . . ing Men, wou'd not screen me from an Imputation your Lo^p, I'm sure, wou'd alwise wish me to shun. These Reasons, I dare say, convince your Lo^p, that my going North is not only unnecessary, but very improper, at this time.

All your Lo^p's Fr . . . ds here join me in wishing, that your Lo^p may live for many Years to serve your King and Country. (a) . . . great Affection,

Your Lo^p's

Dutifull

FRASER.

Then the Lord *Sandys* moved to adjourn to the Chamber of Parliament: And the Lord High Steward going back to his Chair, the House was adjourned accordingly: And then the Lords and others returned in the same Order as before.

The House being resumed in the Chamber of Parliament,

Ordered, That this House will proceed further in the Tryal of *Simon Lord Lovat* on Monday next, in *Westminster-Hall*, at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by Mr. *Spicer* and Mr. *Edwards*, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do take back the said Lord *Lovat*, and bring him again to the Bar of this House in *Westminster-Hall*, on Monday next, at Eleven of the Clock in the Forenoon.

(a) The Letter was torn where these Blanks are.

P P

Monday

Monday the 16th of March, 1746.

The F I F T H D A Y.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on Monday last, into *Westminster-Hall*; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes, Lieutenant of the *Tower of London*, bring forth your Prisoner *Simon Lord Lovat* to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Lord High Steward asked Leave to go down to the Table: And went accordingly.

Lord High Steward. Gentlemen of the House of Commons, You may proceed in your Evidence.

Sir William Yonge. My Lords, We beg Leave to call *Robert Frazer* again.

Robert Frazer called into Court.

Sir William Yonge. My Lords, He has been already sworn; and [*Shewing the Witness a Letter*] look upon that Letter; and acquaint their Lordships, of whose Hand-writing it is.

R. Frazer. It is mine; it was wrote by me.

Sir William Yonge. By whose Order did you write it?

R. Frazer. By my Lord *Lovat*'s Order.

Sir William Yonge. Was it dictated by my Lord *Lovat*?

R. Frazer. Every Word of it.

Sir William Yonge. Is it signed?

R. Frazer. It is not signed.

Sir William Yonge. Did you send that Letter to any body?

R. Frazer. Yes; it was sent from *Gortuleg* to the Master of *Lovat*, at *Inverness*.

Sir William Yonge. By whose Order did you send that Letter?

R. Frazer. By my Lord *Lovat*'s Order.

Then the Letter, N^o. XI. was delivered in, and read by the Clerk at the Table, as follows.

N^o XI.

My dearest Child,

Gortulegg came home last Night, with *Inveralachy*'s Brother, and the Two *Sandy*'s, *Fairfeild*'s Son, and mine: And I am glad to know, that you are in perfect Health; which, you may be sure, I wish the Continuance of. I am sure, for all *Sandy*'s Reluctancy to come to this Country, he will be better pleased with it than any where else; for he has his Comrade, *Gortuleg*'s Son, to travell up and down with him; and I shall not desire him stay ane Hour in the House but when he pleases.

My Cousin Mr. *William Frazer* tells me, That the Prince sent Notice to Sir *Alexander Bennerman*, by Sir *John M'Donell*, that he would go some of these Days, and view my Country of the *Aird*, and fish Salmon upon my River of *Beauly*: I do not much covet that great Honour at this time, as my House is quite out of Order, and that I am not at home myself, nor you: However, if the Prince takes the Fancy to go, you must offer to go along with him, and offer him a Glas of Wine, and any cold Meat you can get there. I shall send

send *Sandy Doan* over immediately, if you think that the Prince is to go: So I have ordered the glyd Post to be here precisely this Night.

Mr. *William Frazer* says, That Sir *Alexander Bennerman* will not give his Answer to Sir *John M'Donell*, till he return, about the Prince's going to *Beaufort*; and that cannot be before *Saturday Morning*. So I beg, my dearest Child, you may consider seriously of this, not to let us be affronted; for, after Sir *Alexander*, and other Gentlemen, were entertain'd at your House, if the Prince should go, and meet with no Reception, it will be ane Affront, and a Stain upon you and me while we breath: So, my dearest Child, don't neglect this; for it is truly of greater Consequence to our Honour than you can imagine, tho' in itself it's but a Maggot: But, I fancy, since *Cumberland* is coming so near, that those Fancys will be out of his Head. However, I beg you may not neglect to acquaint me (if it was by ane Express) when you are rightly informed, that the Prince is going there. I have been extreemly bad these Four Days past with a Fever and a Cough; but, I thank God, I am better since Yesterday Afternoon. I shall be glad to see you here, if you think it proper, for as short or as long a Time as you please. All in this Family offer you their Compliments: And I ever am, more than I can express,

March 20th.
1746.

My dearest Child,

Your most affect^d and dutifull Father.

P. S. The Prince's Reason for going to my House is, to see a Salmon kill'd with the Rod, which he never saw before; and if proposes that Fancy, he must not be disapointed. I long to hear from you, by the glyd Post, some time this Night. I beg, my dear Child, you may send me any News you have from the East, and from the North, and from the South.

Lord Halifax. My Lords, I should be sorry to ask any Questions that might interrupt the Managers of the House of Commons in their Proceedings. I should likewise be sorry, that any Questions should be asked by me that should, in any degree, preclude the noble Lord at the Bar from any Defence he should think proper to make: But, my Lords, as the Answer, in Consequence of my Question, will thoroughly establish, or else greatly diminish, the Credit which your Lordships may give to this Evidence; therefore I think it my Duty to ask, Whether, after the Writing of this Letter, my Lord *Lovat* did himself read the Letter, and approve of it? And I look upon it, this would be a necessary Question to ask, in regard to all the other Letters which have been, or shall be, produced.

R. Frazer. I never did write a Letter from my Lord *Lovat*, but I first made a Scraul, or a Draught of it; and whenever it was transcribed upon clean Paper, it was always read to my Lord *Lovat*.

Lord High Steward. Repeat what you said just now aloud.

R. Frazer. I first made a Scraul or Draught of all the Letters that I wrote for his Lordship, and afterwards transcribed them upon gilt Paper; and then read them every Word to his Lordship. Sometimes my Lord read them himself, and sometimes I read them to him.

Lord High Steward. Upon your Oath, when you read any Letter to my Lord *Lovat*, after it had been written over fair, did you read it truly as it was written, Word for Word?

R. Frazer. Yes, Word for Word.

Sir *William Yonge* produced another Letter to the Witness, and asked,

Sir William Yonge. Look upon that Letter, and tell my Lords of whose Hand-writing it is.

R. Frazer. It was written by my own Hand.

Sir William Yonge. My Lords, We have done with this Witness for the present.

Lord High Steward. My Lord *Lovat*, Would you now ask this Witness any farther Questions?

Lord Lovat. No; I hope to convince these Gentlemen, that no Footman should give Credit to his Evidence.

[Then the Witness withdrew.

Mr. Attorney General. My Lords, We beg that Mr. *John Murray* of *Broughton* may be called in again.

Mr. Murray called into Court.

Mr. Attorney General. My Lords, he has been already sworn. We pray, my Lords, that this Witness may be shewn the Letter, N^o III. that was read to your Lordships before, and that was proved to have been written by my Lord *Lovat* to Mr. *Murray*.

The Letter, N^o III. was shewn to the Witness.

Mr. Attorney General. Do you remember ever to have seen that Letter before ?

J. Murray. I am sorry to say, that I received this Letter at *Inverness*, in the End of *February*, or Beginning of *March*, by the Hands of Mr. *Frazer* of *Gortuleg*.

Mr. Attorney General. Mr. *Murray* says, He is sorry to have received it ; but I desire to ask him, if he did in Fact receive it ?

J. Murray. I did receive it, at *Inverness*.

Mr. Attorney General. My Lords, We pray, that the Letter written by the Pretender's Son to my Lord *Lovat*, may be shewn to Mr. *Murray*. The Use which we shall make of it, we shall explain to your Lordships by-and-by.

The Letter, N^o VI. was accordingly shewn to Mr. Murray.

Mr. Attorney General. Of whose Hand-writing is the Name at the Bottom of that Letter ?

J. Murray. The whole Letter is written by the Pretender's Son himself.

Mr. Attorney General. The whole Letter ?

J. Murray. Yes.

Mr. Attorney General. Both the Body and the Subscription ?

J. Murray. Yes.

Mr. Attorney General. Is it directed to any body ?

J. Murray. For the Lord *Lovat*.

Mr. Attorney General. Is that Direction also of the same Hand-writing ?

J. Murray. The same Hand.

Mr. Attorney General. Do you know if that Letter was ever sent ?

J. Murray. This Letter was delivered, together with the other Letters, to *Hugh Frazer*, at *Glasgow*.

Mr. Attorney General. By whom was it delivered to him ?

J. Murray. By me, to the best of my Remembrance.

Mr. Attorney General. Was it, or was it not, sent and delivered by the Direction of the young Pretender ?

J. Murray. It was by his Direction.

Mr. Attorney General. What was it delivered to *Hugh Frazer* for ?

J. Murray. It was delivered to him, to forward to my Lord *Lovat*.

Lord High Steward. Have you ever seen the Pretender's eldest Son write ?

J. Murray. Very often.

Lord High Steward. Upon that Knowledge you have of his Hand-writing, do you, upon your Oath, believe that Letter to be of his Hand-writing ?

J. Murray. Yes ; I was present in the Room when he wrote it.

Then the Witness was shewn another Letter by Sir William Yonge, N^o VII.

Sir William Yonge. Who was that Letter wrote by ?

J. Murray. This Letter was wrote by *Cameron* of *Lochiel*.

Sir William Yonge. By whose Order was it wrote ?

J. Murray. It was wrote by the Direction of the young Pretender himself.

Sir William Yonge. Was that Letter signed ? and by whom ?

J. Murray. The Letter was signed by *Cameron* of *Lochiel*, *MacPherson* of *Clunie*, and by myself.

Sir William Yonge. To whom was that Letter directed ? Or, is there any Direction or Address to it ?

J. Murray. No ; there is none.

Sir William Yonge. To whom was it intended to be sent ?

J. Murray. To my Lord *Lovat*.

Sir William Yonge. Was it, or was it not, delivered to any body to be sent to my Lord ?

J. Murray. Yes ; it was delivered to *Hugh Frazer*.

Sir William Yonge. At the same time with the Letter from the Pretender's Son ?

J. Murray. Yes ; at the same time, and in the same Packet.

Sir

Sir John Strange. What is the Reason why it was not addressed?

J. Murray. The Reason why it was not addressed was, that *Hugh Frazer* asked, If there was a Patent granted by the Pretender to create my Lord *Lovat* a Duke. To which *Lochiel* answered, That, if there was any such Patent, it was in the Hands of his Father *John Cameron*, who was then at *Dunblain*; and therefore that Packet was not addressed, because it was not then known, whether there was such a Patent, or no: And it was left without any Direction, till *Hugh Frazer* should inquire, whether there was any Patent of Duke, or not.

Sir John Strange. Are you acquainted with *Cameron* of *Lochiel*'s Hand-writing, or not?

J. Murray. Perfectly well.

Sir John Strange. Was you present when that Letter was written, or no?

J. Murray. There was none present, but *Cameron* of *Lochiel*, *MacPherson* of *Clunie*, and I.

Sir John Strange. Did you see them sign that Letter?

J. Murray. Yes; I did.

Mr. Attorney General. My Lords, I mentioned to your Lordships, That I would explain the Use intended to be made of these Two Letters. Your Lordships have observed, That, among the several Species of Treason charged by the Articles upon the Prisoner at the Bar, one of them is, His corresponding with the Pretender's Son, and likewise with Persons employed by him. My Lords, in order to shew a Correspondence between the Prisoner and the Pretender's Son, and the Persons named in that Letter, we have shewn in Evidence, That the Prisoner at the Bar had an Interview with *Cameron* of *Lochiel*, *MacPherson* of *Clunie*, and *Mr. Murray*; which is one Kind of Correspondence: And, my Lords, it is material to shew, that those Persons, with whom the noble Lord at the Bar thus corresponded, were Persons employed by the Pretender's Son, it being, by an Act of the 17th of his present Majesty, made expressly High Treason to correspond with any Persons employed by the Pretender's Son. My Lords, the First Letter now mentioned is a Letter wrote by the Pretender's Son to my Lord *Lovat*; in which, your Lordships will find, he refers to another Letter, which is the Second Letter produced to your Lordships, as a Letter written by his Order, and containing his Sense. Your Lordships have heard from *Mr. Murray*, that the First Letter was written by the Pretender's Son, and that the Second was written by his Order; and that proves expressly, that the Persons by whom they were written, were Persons employed by the Pretender; and consequently, any Persons corresponding with them were guilty of High Treason within the Meaning of the Act: We therefore pray, That the Letters may be read. We do not offer them as Letters received by my Lord *Lovat*, but as Letters written by Persons employed by the Pretender's Son. The First is proved to be written by the Pretender's Son himself, and the Second by his Direction.

Then the Letter, dated the Second of January 1746, signed Charles P. R. was delivered in, and read by the Clerk, at the Table; as was also the other Letter of the same Date, from Cameron of Lochiel, MacPherson of Clunie, and Mr. Murray: Which said Letters are as follow:

N^o VI.

Glasgow, Jan. y^e 2d, 1746.

I Have just now read a Letter written to you by *Lochiel*, *Cluny*, and *Murray*; and you may depend on its containing my true Sentiments, as much as if it was all writ with my own Hand. I shall only add to it, that you cannot do me either more Pleasure, or more Service, than by coming to join me out of hand; and then you need doubt as little as I do of our being perfectly satisfied with one another.

For the Lord Lovat.

Charles, P. R.

N^o VII.

My dear Lord,

YOU need not be surpris'd, from the Situation we have been in for some time past, that we have faln out of the Way of writing; notwithstanding of which, our particular Love and Affection for your Lordship, and Family, as well as our sincere Attachment to our King and Countrey, seems to render itt absolutely necessary to give your Lordship the Trouble of this Letter.

We are no Strangers to the great Pain and Trouble you Lordship had taken to persuade *MacLeod* and *Sir Alexander* to act that Part, which was so consistent with their Honour and

Interest, and, if we may venture to say so, the very Being of their Familys; for your Lordship well knows, that, upon the falling or standing of the severall *Highland* Familys now engaged in this Affair, theirs equally depends: For, did we faill in our Attempt, and the Conqueror prove either so weak or wicked, as to endeavour the Extirpation of our Familys (which perhaps wou'd not prove so easy as they imagine), these Two Gentlemen woud probably be taken (upon some false Pretext) into the general Corps of Disaffected, with a View to make a clean Stage of the Whole: Or allowing, that, from the scandalous Activity of one, and shameful Indolence of the other, they were spared; yet their distant and small Influence, in proportion to the Body of the Clans, wou'd necessarily render them insignificant to any Party, that might, from unforeseen Causes, afterwards appear.

Your Lordship's firm and steady Behaviour, in spite of all the underhand Dealings, as well as open Threats, of the Lord *Loudon*, and your Neighbour the President (who has rendered himself a Scandall to all *Scotsmen*, and a Nauseance to all Society), together with the early noble and generous Appearance of the Master of *Lovat* in the Cause of his King and Countrey, has not only gain'd your Lordship the Admiration of this Island, but has settled the Affection and Friendship of the Prince for your Family upon a more firm and solide Foundation, than, we dar venture to say, it was ever on with any of the Royal Family of *Steuart*, notwithstanding your Lordship's many heavy Sufferings in that Cause: And this, my Lord, we don't assure you from ourselves alone, but by his Royall Highness speciall and repeated Orders.

Now, my Lord, allow us to congratulate you upon your happy Escape from *Inverness*. Had it been any other, we could not possibly have given Credite to it, from the Circumstances of the Story; but knowing with what Address Lord *Lovat* has so often extricate himself from Difficulties, unsurmountable by the rest of Mankind, we cou'd not allow ourselves to form the least Doubt of the Truth of it, and are now only in Pain to think of the Fatigue you must have undergone, and the Danger your Health must have run, in so sudden a Change of your usuall Way of Liveing.

The glorious Retreat his Royall Highness made from within Fourscore Miles of *London*, upon Intelligence of the *French* being landed in *Scotland*, haveing an Enemy within 20 Miles in Front, and Mr. *Wade* within 3 Days March of *Lancaster* in his Rear, plainly shows what a great and enterprising Mind is able to perform. The Unactivity of the Enemy in not harrassing the Royall Army, when so much in their Power, with the feeble and weak Attack they made upon our Rear near to *Penrith*, where they were most severely handled, makes it evident how easy a Game we wou'd have, did *Scotsmen* act with that Unanimity and Vigour, that made their Ancestors so famous over all *Europe*. From the present Situation of the Prince's Army on this Syde of *Forth*, who are all in the highest Spirits, the Numbers in the North already in Arms, the Victory Lord *Louis Gordon* has obtain'd over *MacLeod* and his Adherents, the landing of a Body of *French* Troops, with a fine Train of Artillery, the Kings of *France* and *Spain* declareing the Prince their Ally, and taking him under their speciall Protection, the *French* Ambassador haveing taken on his publick Character; and, in fine, an absolute Promise from the Court of *France* of a Descent of 15,000 Men in *England*, as by Letters received Eight-and-forty Hours agoe from his Royall Highness the Duke of *Albany* and *York*, and from Cardinal *Tencin*, makes itt plain, that it now depends on us alone to restore the Royall Family to the Throne of their Ancestors, the Rights and Liberties of the Subject, and *Scotland* to that Honour and Independency your Lordship has so long and ardently wish'd for; which last Article we are absolutely sure of, as *Scotland*, in the worst of Events, must be ours.

And now, my Lord, the only proper Means that appears to us, in common with all the Prince's Wellwishers, to bring this to the wished-for Issue, is your Lordship's openly appearing in Arms, and joining the Royall Standard; in which Case, we are certain, that there is not a Man beyond the *Forth*, however timorous or cautious (except some few who have already destined themselves to Perdition), but will appear with the greatest Alacrity and Chearfulness. But, not to take up too much of your Lordship's Time, what his Royall Highness above all things wishes and desires is, to have your Lordship with him to take upon you the Command of the Army; for tho' the Prince knows, that your Lordship's Age makes it impossible for you to undergo the drudgery Part of a Generall, yett he is sensible, that your Advice and Council will be of greater Value, than the Addition of several Thousand Men. Tho' your Lordship has your own Equipage, yett we are apt to believe, the Prince's Coach and Six (of which he himself makes no Use) will be as convenient a Voyture for your Lordship; and the *French* Ambassador, with Lord *Pittsigo*, who has been in itt all along, won't prove disagreeable Company.

In thort, it is impossible for us to give the hundred Part of the Reasons, that makes us so sensible of the absolute Necessity of haveing your Lordship about the Prince's Person, which you will be fully satisfy'd of at Meeting.

This

This Moment *Hugh Frazer* is come here, and has given the Prince a Detail of your Lordship's Situation, and that of the Country, with the Propofall your Lordship sent to the Army at *Pertb*; of which he approves exceedingly; and will To-morrow send Orders, by Exprefs, to Lord *John Drummond* to meett him att *Bannockburn*, Saturday first, there to concert in what Shape it shall be putt in Execution, and to move 4 or 6 Piece of Cannon towards *Blair-Castle* without Delay: But of this your Lordship is most earnestly entreated not to mention one Word to any body, leaste the makeing it publick should procure the Escape of some Folks, who may otherwise be catch'd napping; and your Lordship is beg'd to cutt off all Intelligence from that Quarter.

We shall now only beg, that your Lordship give no Ear to any of the Storys spread in the North, as the Gazettes have not contained one Word of Truth in relation to us since we left *Edin'*; and do us the Justice to believe, that we are, with most sincere Regard, Attachment, and Esteem, wishing you many happy and prosperous new Years,

My dear Lord,

Your Lordship's most obedient, most faithful,

Glasgow, Jan^r. 2d;
1746.

and most sincerely affectionate humble Serva . . .

The Signature of this Letter was torn off.

Mr. Attorney General. My Lords, We have done with *Mr. Murray*.

Lord High Steward. My Lord *Lovat*, Would you ask any Questions of *Mr. Murray*?

Lord Lovat. My Lords, I did ask your Lordships before, if I might have Liberty to cross-examine the Witnesses brought against me; and your Lordship told me, I might have an Opportunity of doing it, when I came to make my Defence.

Lord High Steward. Your Lordship misunderstood me: I did not say, that you would have an Opportunity of cross-examining any of the Witnesses produced against you, when you came to make your Defence; but that you was at Liberty, when the Witnesses were produced, to ask them such Questions as you should think proper; and that, when you came to your Defence, you might make such Observations upon their Evidence as you should think fit: But, if your Lordship has a mind to call any of those Witnesses in your Defence, which have been produced against you, I do not doubt but the Managers of the House of Commons will take care, that they shall attend.

Sir John Strange. My Lords, If the noble Lord at the Bar will give notice over Night of any of our Witnesses, that he thinks necessary to call in his Defence, we will take care, that they shall be in the Way.

Lord High Steward. My Lord *Lovat*, Would you now ask any Questions of *Mr. Murray*?

Lord Lovat. My Lords, I shall say nothing till I come to make my Defence, and then I shall hope to have an Opportunity to say what is just against these Witnesses.

Sir William Yonge. My Lords, We now beg Leave to call *Robert Frazer* again.

Robert Frazer called into Court again.

Sir William Yonge [shewing the Witness a Letter, N^o XXI.] asked, Look upon that Letter, and tell my Lords of whose Hand-writing it is?

R. Frazer. It is mine.

Sir William Yonge. By whose Order did you write it?

R. Frazer. By my Lord *Lovat*'s.

Sir William Yonge. Did he dictate it to you?

R. Frazer. Every Word.

Sir William Yonge. Who is the Letter signed by?

R. Frazer. By my Lord *Lovat*.

Sir William Yonge. Did you see him sign it?

R. Frazer. Yes.

Sir William Yonge. To whom did he order it to be sent?

R. Frazer. To the Duke of *Cumberland*.

Lord High Steward. Was that Letter read over by my Lord *Lovat*, or was it read over by you to him, before it was sent?

R. Frazer. It was read over both by my Lord *Lovat*, and by me to him

Then a Letter, signed Lovat, without any Date, was delivered in, and read by the Clerk at the Table, and is as follows:

N^o XXI.

S I R,

THIS Letter is most humbly address'd to your Royal Highness, by the very unfortunate *Simon Lord Frazer of Lovat.*

I durst not presume to solicit or petition your Royal Highness for any Favour, if it was not very well known to the best People in this Country, attached to the Government, such as Lord President, &c. and by those that frequented the Court at that time, that I did more essential Service to your Royal Family, in suppressing the Great Rebellion in the Year 1715, with the Hazard of my Life, and the Loss of my only Brother, than any of my own Rank, in Scotland: For which I had Three Letters of Thanks from my Royal Master, by the Hands of the Earl of Stanhope, then Secretary of State; in which his Majesty strongly promises to give me such Marks of his Favour, as would oblige all the Country to be faithful to him thereafter. Indeed the gracious King was as good as his Word to me; for, as soon as I arrived at Court, and was introduced to the King by the late Duke of Argyll, I became, by degrees, to be as great a Favourite as was about Court, of a Scotsman: And I often carried your Royal Highness in my Arms, in the Parks of *Kensington* and *Hamptown-Court*, to hold you up to your Royal Grandfather, that he might embrace you; for he was then very fond of you, and of the young Princesses.

Now, Sir, all I have to say in my present Circumstances, is, That if your Royal Highness will be pleased to extend your Goodness towards me, in the generous and compassionate Manner, in my present deplorable Situation, if I have the Honour to kiss your Royal Highness Hands, I would easily demonstrate to you, that I can do more Service to the King and Government, than the destroying a Hundred such old and very infirm Men, like me, past Seventy (without the least Use of my Legs or Knees) can be of Advantage, in any Shape, to the Government.

Your Royal Father, our present Sovereign, was very kind to me. In the Year 1715, I presented on my Knee, to his Majesty, a Petⁿ, in favours of the Laird of *M^cIntosh*, to obtain a *Noli Prosequi* for him; which he most graciously granted, and he gave it to *Charles Catbcart*, then Groom of his Bed-Chamber, and ordered him to deliver it into my Hands, that I might give it to the Laird of *M^cIntosh*. This was but one Testimony of severall Marks of Goodness his Majesty was pleased to bestow on me, while the King was at *Hanover*: So I hope I shall feel, that the same compassionate Blood runs in your Royal Highness Veins.

Major-General *Campbell* told me, that he had the Honour to acquaint your Royal Highness, that he was sending me to *Fort William*; and that he beg'd of your Royal Highness to order a Litter to be made for me, to carry me to *Fort Augustus*, as I am in such a Condition, that I am not able to stand, walk, or ride. I am, with the outmost Submission, and most profound Respect,

S I R,

Your Royal Highness most obedient,

and most faithful humble Servant,

LOVAT.

Sir William Yonge. My Lords, We have done with this Witness.

Lord High Steward. Lord Lovat, Would your Lordship ask him any Questions?

Lord Lovat. No.

[Then the Witness, by the Direction of the Lord High Steward, withdrew.]

Lord High Steward. Gentlemen of the House of Commons, have you any other Witnesses to produce?

Sir William Yonge. No, my Lords, we have no more Witnesses to produce.

Sir

My Lords, I have humbly submitted the Words of this Answer; which I think I may say, I have carefully reviewed, and I am fully satisfied, that the Answer is in every Part, and in every Word, perfectly correct, and that it is in every Part, and in every Word, perfectly correct, and that it is in every Part, and in every Word, perfectly correct.

THE Commons have now gone through all the Evidence they propose to lay before your Lordships, in Support of their Impeachment; and as that has unavoidably run this Cause into a great Length of Examination, they think it may not be improper to have the Whole that relates to the impeached Lord collected together, and presented to your Lordships View, in as concise a Manner as the great Variety of Circumstances that have attended this Case, will admit of.

This Province is assigned to me.

And we choose to enter upon it now, at the Close of our Evidence, as the most fair and candid Way of Proceeding, with regard to the impeached Lord; For—should the Commons reserve the summing up, and observing upon their Evidence, to make a Part of the Reply (as they might do), the noble Lord at the Bar (his Defence being then closed), might perhaps be under some Disadvantage; whereas, in this Way of Proceeding, if any Mistake shall be committed in Stating of the Evidence, or any Observations made upon it, that the Case will not bear, an Opportunity is hereby given to the Party accused, to set it right.

My Lords, The Articles that have been read to your Lordships, contain Four distinct Charges of High Treason.

The First is, "The Compassing and Imagining the Death of the King."

The Second is, "The Levying War against the King, in his Realm."

The Third is, "Corresponding with the Pretender to his Majesty's Crown."

And the Fourth is, "Corresponding with the Pretender's Son, and others employed by him, knowing them to be so employed."

The Two first of these are declared to be Treason, by the express Words of the Statute of 25th *Edward III.*

The Third is made Treason, by the 13th & 14th *William III. cap. 3.* The Words of which extend to the corresponding with the Pretender, by Letters, Messages, or otherwise.

The Fourth Species of Treason is against the Statute of 17th *George II. cap. 39.* which makes it Treason to correspond with the Pretender's Son, or others, employed by him, knowing them to be so employed.

As I have no Imagination, that any Doubt can arise, whether, when the Matters of Fact are proved to your Lordships Satisfaction, the Case will not come within the Provisions of these Laws, I shall forbear entering into any Argument upon them; and shall only say, That, although the Articles have charged the First Sort of Treason, in the precise Words of the Statute of 25 *E. III.* which are, "Compassing and Imagining the Death of the King," yet the Law does not require Evidence of actually accomplishing so horrid a Crime; for that Sacred Life is so guarded, that the bare going about, or contriving so flagitious a Scheme, is sufficient to constitute this great Offence, provided those Purposes are manifested by Overt Acts.

And that, altho' Levying of War is a distinct Branch of High Treason, yet it is also an Overt Act of the former Species, "That of Compassing and Imagining the Death of the King."

My Lords, in stating this Evidence to your Lordships, I can no way do it so intelligibly, as by following the Example of the learned Manager who opened the Nature of the Case, and divided it into Three distinct Periods of Time.

The First Period contains the Behaviour of the impeached Lord, before the Landing of the Pretender's Son in *Scotland*, in the Month of *July 1745.*

The Second Period includes the Facts proved to have been committed by the noble Lord at the Bar, from the time of the Pretender's Son's Landing to the Battle of *Culloden.*

And the Third Period relates to what happened afterwards, to the time of my Lord *Loval's* being sent up, and committed to the *Tower.*

As to the First Period of Time, your Lordships are pleased to observe, that our Evidence goes so far back as the Year 1719.

And, my Lords, we chose to take it up there, because, in the noble Lord's Answer, he values himself much upon "Having given, in the Year 1715, the strongest Proofs of his Zeal for, and Attachment to his late Majesty, and the Succession of the Crown in his illustrious Family, against such as had undertaken the Destruction of both: And now laments his Misfortune, to have his Fidelity questioned, at the End of his Days, when near worn out with Age and Infirmities; and to be charged with intending the Subversion of a Government he had, in the Strength and Vigour of his Age, exerted his utmost Power and Address to support."

My Lords, I have faithfully rehearsed the Words of this Answer; which, I think, made it necessary for the Commons to shew, That the noble Lord's engaging in the late Rebellion, was not the Effect of Dotage, or through the Constraint, or by the Imposition of others; but proceeded from a long and deep-rooted Principle of Disaffection to the Protestant Succession, and of Attachment to the Cause of the Pretender.

To begin then, at the Year 1719: Mr. *Chevis*, a near Neighbour of the impeached Lord, has sworn, that the noble Lord told him, that, in the Year 1719, when an Invasion was attempted by *Spain* upon *Scotland*; and Lord *Seaforth* was raising his Men, in favour of the Pretender, he (Lord *Lovat*) wrote a Letter to Lord *Seaforth*, to acquaint him, That Lord *Lovat* would join him with his Clan: That this Letter was delivered to Lord *Seaforth*, after it had been first shewn to one *Chisholm* of *Knockford*. This *Chisholm*, it appears, informed the late Duke of *Atbol* of the Contents of the Letter; and his Grace sent up Notice of it to the Government. This came to my Lord *Lovat*'s Ears, who was greatly alarmed at it; but your Lordships find he had soon the Dexterity to get up his Letter, upon Terms he had an Opportunity of making with Lady *Seaforth*: After which he shewed it in Confidence to a trusty Friend of his, who declared it to be a treasonable Letter; and as such, it was thrown into the Fire.

My Lords, I cannot help observing to your Lordships, that it appears from this Transaction, that the noble Lord was then contriving to commit Treason, and yet screen himself from Punishment; for he declared, he had not signed the Letter; and therefore, if it had been forthcoming, it could not be fixed upon him.

In the Year 1737, your Lordships find him sending a Message, by *Roy Stuart*, to the Pretender at *Rome*, to assure him of his Fidelity, and to hasten his Patent that had been promised him for a Dukedom.

It has likewise appeared in Evidence, That he afterwards sent another Message of the same Nature, by *Drummond*.

In the Year 1739, he appears to have proposed an Invasion to *Drummond* of *Bochaldie*, in favour of the Pretender, his lawful Sovereign (as he called him); and in whose Cause he then declared he was determined to live and die.—An Expression your Lordships cannot but have observed occurs also in his Letters.

And the same Proposal Mr. *Chevis* has proved was afterwards made by my Lord *Lovat* to *Lochiel* and *Gluny M'Pherson*.

My Lords, I pass over the poetical Performance between *Roy Stuart* and the noble Lord, and go on to the Year 1740. About this time it was he declared to Mr. *Chevis*, that he had signed and sealed an Association of the Highland Chiefs, in favour of the Pretender; and which Lord *Lovat* declared was sent over to Cardinal *Fleury*.

My Lords, This material Part of our Evidence is so far confirmed, that Mr. *Murray* (the Pretender's Son's Secretary) has proved his hearing of it at *Paris*; and that it was also mentioned to him, at a private Audience he had of the Pretender's eldest Son in *France*.

He has likewise proved what passed between M. *Amelot* and him, upon the Foot of such an Association; and the Assurances given by that Court, of Encouragement and Support.

But, above all, your Lordships have heard it confirmed by a Passage, in a Letter of the noble Lord's to his Son, that was read at the Table; wherein he tells him, "That, above Seven Years ago, he was one of those that entered into a formal Association, to venture their Lives and Fortunes to restore the Pretender (by him called King) and his Offspring; which Engagement (he says) was signed with their Hands and Seals, and sent to *France* to Cardinal *de Fleury*, then First Minister at that Court; and was by him shewn to the King his Master, who promised them his Assistance, and Succours, to restore their King."

"Since which (says he) I have made it my Business to promote the King's Interest, and to gain and engage faithful Subjects to serve him."

And, in his Letter to the Pretender's Son, he appeals to all who have come into that Country, who (he says) will do him the Justice to declare, "That he has always been the most zealous and most active Partizan they had in the North of *Scotland*; and in that, he owns, he did but his Duty." This he repeats, in his Letter to *Lochiel*; and boasts himself to be "the Person who kept Life and Spirits in the Pretender's Affairs, more than any Man in the North."

In the Year 1742, your Lordships find him declaring he had got a Commission to be Lieutenant-General of the Highlands, and a Patent of Duke from the Pretender; and which he said he had merited by his Services to that Family.

This Declaration is proved by Mr. *Chevis*. The Talk of it, and seeing a Copy in a Desk, supposed to be signed by the Pretender, is proved by *Robert Fraser*. And *Hugh Fraser* says, my Lord *Lovat* shewed it him.

Mr.

Mr. *Murray* told your Lordships, he found my Lord *Lovat* expected the original Patent had been brought over; but Mr. *Murray* not being certain, that such a Patent had ever passed, he sent his Letters to Lord *Lovat*, without an Address, but inclosed in a Packet, with other Papers; And this, he has told your Lordships To-day, was done for Fear of committing a Mistake, either by directing them to his Grace, or only to Lord *Lovat*.

This Affair of the Commission and Patent is also confirmed by a Passage in the Letter to his Son, that I appealed to before; wherein he tells him, "That, in Proof of the Sense his own King had of his Loyalty and Zeal, he had sent him such a Commission and Patent, besides a Number of Letters under his own Hand; the Original of which Patent, he tells his Son, was in *Drummond's* Hands; but he, Lord *Lovat*, had an authentick Copy of it, signed and countersigned by his King."

"These Favours (he adds) had more than ever attached him to that Interest; and he should be a Monster of Ingratitude if they had not." And, in the Postscript, he charges his Son to inquire for the Patent; adding, That "he asked nothing of his Royal Highness (as he calls the Pretender's Son) but to give his Countenance, and own publickly what his Father had done for him."

Your Lordships have likewise heard it proved, that, during all this time, the whole Turn of his Conversation was in favour of the Pretender.

He declared he had made an Alliance, by the Marriage of his Daughter, which added to his Strength, and would enable him to humble his Neighbours.

The Healths drank at his Table have been mentioned by the Witneses, particularly that execrable one proposed by himself, of Confusion to the White Horse, and all their Generation.

The next Thing your Lordships heard of, were his Encomiums on the Pretender, whose Countenance he said proclaimed him, to all Beholders, the rightful King.

There are likewise in Proof, his Exultations on the Taking of *Ostend*, as laying open all the Coast of *Flanders*, and exposing us to an Invasion in the Compass of one Night, from the *French*, who, he declared, would carry all before them. And this we rely upon as a Circumstance of great Malignity, when it is considered what Numbers of our Troops were then abroad, in the Cause of Liberty and *Europe*, and what a Situation our Power at home was in at that time.

Your Lordships have likewise heard his Declarations about the Reformation and the Revolution, and of the noble Lord's Scheme to get rid of both; which was to bring in the Pretender.

And as to Religion, his Declaration to Mr. *Chevis* was, That he believed there was no true Religion in the World but one; and that was the Church of *Rome*.

A very extraordinary Declaration this, to be made by one, who, by having had an Independent Company in the King's Service, and upon other Accounts, must have seemed (at least) to have been of a different Opinion.

Thus circumstanced, my Lords, and this Temper of Mind, was Lord *Lovat* in, at the Breaking out of the Rebellion, in the Summer of 1745:

Which is the Second Period of our Evidence.

And this Part of our Evidence, your Lordships will be pleased to remember, began with the early Notice it appeared my Lord *Lovat* had of the Pretender's Son's being landed in *Scotland*.

Upon the News of this, my Lords, he prepares immediately to support him.

His Son, a Youth of about Nineteen Years old, either newly come home, or sent for from the University on purpose, is appointed to head the Clan.

The Design of sending him to travel is laid aside.

A Proposal made by those who were willing to have kept the Son out of Rebellion, is (upon Consideration) rejected by Lord *Lovat*, who, at the same time, declared, that his first Intention was to have headed the Clan himself; but that now his Son should go, since others had disappointed him, who he expected would have joined Forces with him.

And, in Consequence of this, Orders are proved to have been given by my Lord *Lovat* for all Military Preparations.

My Lords, this Proposal for the Son's travelling is proved by *Hugh Frazer*, to have been made to, and rejected by the noble Lord; who also, in his Letter to *Murray*, makes use of these Words: "I have sent (says he) my eldest Son, the Hopes of my Family, and the Darling of my Life, a Youth about Nineteen Years old, who was just going abroad for his Studies and Education; I have sent him (says he), instead of this, to venture the last Drop of his Blood in the glorious Prince's Service."

Hugh Frazer has also proved his being charged with a verbal Message to the Pretender's Son to the same Effect; and his being sent back by *Murray*, with a Letter to Lord *Lovat*.

He has also proved, That, when he delivered the Letter, and told my Lord *Lovat* the true State of the Pretender's Affairs, which, he said, were not very inviting, after so many regular Forces were come from *Flanders*, which the Rebels would not be able to encounter, my Lord's Declaration upon that Occasion was, that "he had gone too far to go back;" and, for fear this News should dishearten his Son, he ordered *Frazer* not to say a Word of it to him.

Before or about this time likewise, it was, that he received the Pretender's Manifesto.

He orders his Son to read it out aloud to the Company.

And when Mr. *Chevis* (who never went near him afterwards) was offering some Objection to it, my Lord *Lovat* told him, That he talked Treason; or it was Treason in him to object to the reading the Manifesto.

Soon after this, your Lordships may recollect, it has appeared, that great Preparations were made for supporting the Cause of the Pretender.

Arms,—Colours,—Tents,—Powder, and Ball, are prepared, and laid in by Lord *Lovat*'s Order.

His Arms and Crest are painted, supervised, and approved by himself.

So eager is he, that his Son is upbraided for his Backwardness, and the Retainers of the Family are spoke to, to hasten him.

He thunders out his Anathemas against a Gentleman, who, he thinks, had disappointed him, which if he had not done, he says, in his Letter to *Lochiel*, "he had so managed that Part of the North, that above 6000 Men had marched South to the Prince's Assistance; which he (Lord *Lovat*) thought would much encourage his (the Pretender's Son's) own loyal Party, and fright the *English* to his Obedience."

At this time likewise it was, that he wrote those Letters to the Pretender's Son, and his Secretary, which were so audibly and distinctly read to your Lordships, that they stand in no need of a Repetition to make their Impression.

In the next place, your Lordships find him magnifying the Skirmish at *Preston-Pans* into a Victory not to be paralleled in History; which, I may venture to say, was certainly calculated by my Lord for the Encouragement of his People.

When the late Earl of *Cromertie*'s Men marched South, and passed by *Castle-Downey*, your Lordships observe him repining that they should be first ready, and what a Shame it was they should pass by his Nose.

He entertains the late Earl of *Cromertie*, and his Officers, then in Arms for the Pretender, and declaring, in my Lord's Hearing, they were going to assist the Pretender's Son:

And this (as it came out upon a noble Duke's Question) was in a friendly, hospitable Manner, and not as a Person quartered on by Compulsion.

All this while his Men are gathering together.

There are Two Rendezvouses of the Clan, and 700 *Frasers* drawn up within half a Mile of his House.

He offers (as it has been proved) Commissions to several Persons;

Declares his Son was to be their Colonel:

Threats and Promises are made use of by him; and the Fiery Cross is carried about:

The distinguishing Mark of the Rebels, the White Cockade, is worn by the Officers in his Presence:

He drinks to their Success; and, in his Letter to the Pretender's Son, "begs of GOD to preserve him, and give him Success and Glory in all his Enterprizes:"

He advises those he is sending forth not to let the Pretender's Son hazard his Person, by going into Engagements:

He prophesies Victory and Success to him.

Let us all be thankful, that his Prophecies were not fulfilled!

All this while your Lordships find him ballancing between Hopes and Fears:

He gives Orders, and contradicts them, either as our own Forces arrive, or there comes Assistance to the Rebels from *France*;

Infomuch that his Son is at last forced, with Tears in his Eyes, to beg, "He may no longer be made a Fool or a Tool of;" but may then have such Orders as the Father will stand by.

And then it was he directed the Clan to march; and said, "Those were the Orders he would stand to."

And, to prove they marched by his Direction, I appeal to his Letter to the Pretender's Son; wherein he says, "I have sent with my Son all the principal Gentlemen, and Heads of Families of my Clan, with 800 of my common People." And the Words of his Letter to Mr. *Murray* are, "I have sent my Son." He also tells his Son, in the Letter that has

been read, that "he will put all Irons in the Fire to fend him Men: I will be working at them (says he) all I can."

His Friends and Dependents, however, were in doubt what to make of him, and whether it would be safe for them to exert themselves, or not, suspecting (and not without Cause), that he was keeping open a Back-door for himself; and therefore it was they also thought it necessary to call upon him to dissemble no longer, but to take off the Mask; which he performed before them, by pulling off his Hat, and laying it at his Feet, telling them "There it is then."

And, in the Letter addressed to him from the Pretender's Son, your Lordships must have observed a Jealousy he had of him; for he is there pressed to come and join him in Person; "and then (says the Letter-Writer) you need doubt as little as I do of our being perfectly satisfied with one another."

In the Course of our Evidence, my Lords, it has appeared, That he was taken Prisoner by Lord *Loudon*, as fomenting the Rebellion; and his escaping afterwards has been proved.

He corresponds with his Son and *Lochiel*, when in Arms for, and employed by, the Pretender, knowing they were so employed; which is one of the Overt Acts of Treason laid in the Impeachment.

And what is the Game he is all the while playing against his Son? From first to last it is an Endeavour to avoid being fixed himself, and to throw it all upon his Son; that Son, whom he had, in a manner, forced into the Rebellion.

This appears by *Robert Frazer's* Evidence relating to a Draught of a Letter to the Lord President, charging the young Man with Obstinacy, and forcing out the Clan against the Father's Inclination, or Power to controul him: Which when the Master had discovered, by accidentally going into the Secretary's Room, and insisting to see the Draught, which the Father had ordered he should not, he declares (in great Repentment of such Usage from his Father), "That he would go himself to the President, and put the Saddle upon the right Horse. Good God! (says the Master) how can he use me so!"

And the Disposition of the Son is further proved by the Circumstance of pulling the White Cockade out of his Hat in the Father's Presence, and throwing it into the Fire.

And this likewise was confirmed by the Evidence of *Hugh Frazer*, who has told your Lordships, That, both from the publick and private Discourse and Behaviour of the Master, he is satisfied he was better disposed, than to have gone, of his own Accord, into the Rebellion.

To this I may add what fell from *Chevis* on his Cross-Examination; who, when he was asked by the noble Lord about a Plot to hang the Old One, and save the Son, declared to your Lordships, he never heard of any other than directly the Reverse.

A Behaviour this from a Father to a Son, which I the less wonder at in the noble Lord, when I consider, he was at the same time forgetting that natural Allegiance, which he owed to the FATHER OF HIS PEOPLE.

There is one Circumstance more upon this Head, which is, that, when he began to find his Majesty's Forces were likely to be an Overmatch for the Rebels, he privately sent out *Hugh Frazer* to find what Terms he could get from Lord *Loudon* and the President; and what might probably be the Consequence to himself, if his Clan continued in Arms.

And this, my Lords, brings me to the glorious Action at *Culloden*;

A Battle which, the noble Lord declared, was rashly entered upon;

Contrary to his Opinion; which was, That the Rebels should have retired to the Mountains, where, he thought, the Duke's Horse could not follow them, and where they might easily have subsisted themselves till they had received a Reinforcement of Troops and Money.

Upon this Occasion, he pointed out the Distress such a Conduct must have brought upon the King's Troops, and upon that great Commander, who, under the wise Precautions of his Majesty, and by the good Providence of Almighty GOD, has proved to be the Deliverer of his Country.

Surely, my Lords, there is no Need for me to dwell any longer on that Period of Time, which includes the Rebellion.

The Third and last Period is what happened afterwards:

And this, my Lords, consists of a great Number of Particulars, which have been proved at your Lordships Bar.

The First thing your Lordships have heard of is, his personal Conference with the Pretender's Son on the Night of the Battle of *Culloden*.

The Excuses made by the noble Lord to that Person, for not coming himself to join him, on account of his Age and Infirmities, have appeared in Evidence, and are to the same Effect with those, which have been read out of his Letters.

They are proved to have been, to outward Appearance, satisfactory to the Person, to whom these Excuses were made; and your Lordships find the Parting between them was with mutual Embraces.

The next thing your Lordships have heard of, in the Course of our Evidence, is the Flight of the noble Lord, in order to avoid being taken by the King's Troops.

To this End, he retires into a Part of the Country, where, he imagined, it would be impossible for them to find him out, or harass him.

In such a Place it is he had that Meeting with the Rebel Chiefs; on which Occasion his Behaviour is very remarkable.

For it has appeared, that, at that Consultation, he continued to be what, at other times, he boasted to have been, the Life and Spirit of the Party.

Who so forward to reassemble their scattered Forces as he?

It was he that declared they had no need to be afraid; for he did not doubt but Eight or Ten thousand *Highlanders* might yet be raised to defend themselves, either to get Terms from the Duke, or fight the Elector of *Hanover's* Troops; which was the Expression he made use of.

In consequence of this, it was then agreed to raise Men; and a Paper is drawn up for that Purpose. The noble Lord indeed avoided signing it himself, by desiring *Lockiel* to vouch for his Son the Master's Proportion: But it is very observable, that, when his Cunning suggested to him the Declaration, That he was a neutral Person, it presently forsook him, or else he had not accompanied it with another Declaration, that denoted his repining at his not having joined the Pretender's Son on his first Landing.

This Agreement to raise Men is immediately followed by a Distribution of *French* Money for that Purpose; which Money, to the Amount of 35,000 *Livres*, had been just received, to support the Rebels.

The Money indeed, that was intended to raise the *Frasers* with, was not paid into the noble Lord's own Hands; but (the Master being absent) it was delivered to a Servant that attended upon the noble Lord, and Part of it was by himself, soon after, sent to his Son; which brings it home to my Lord *Lovat* as his own Act: It shews him privy to the Design for which it was advanced (which was treasonable); and his own Hand is in the Transaction.

As this Money has appeared to have been sent over to support the Rebellion, and those who joined in it, the noble Lord thought he had a Right to a Share of it; and therefore sends to *Murray* for some of it, which he demanded, and received, for Twenty Days Pay of a Guard to attend his own Person, and defend him against the King's Troops, who were in Search of Rebels at that time.

And when, soon after, his Son came to desire he might be permitted to surrender himself to the Duke, he calls him a Person of a mean Spirit, and advises him against it; that Son, who would have been contented with a thin Regiment, so the Father had been safe.

When taken, his Guilt immediately suggested to him; and he declares openly, That he expected to lose his Head: He comforted himself, however, that his Estate was so settled, that it would be preserved to his Family.

Your Lordships have likewise heard the Circumstances that attended the Search of his Strong Box: When Papers were found in it, he declares, in a jocular Way, that they would find no Treason in them: He continues in this Strain whilst many private and immaterial Papers were reading; but, when the Letter from his Son (which has been read in Evidence) appeared, and he is asked, Whether that came within his Description, or was designed to be found there, he changes his Note, is surpris'd at its being found there, and agrees it was not in a proper Place.

After all this, I need only barely mention the Offers he made to merit his Life by Discoveries, and appeal to the Letter written by him to the Duke of *Cumberland*, just now read at the Table.—Those must have proceeded from a Consciousness, that he had forfeited his Life before.

How the noble Lord will be able to reconcile all his softening Insinuations in his Letter to the Duke with what he before said to *Lockiel*, wherein he declares, "He is resolved to live and die in his King and Royal Prince's Service; and that no Death the Government can invent can lessen his Zeal, or fright him from his Duty."—This I must leave to his Lordship; for, I own, it is past my Skill.

My Lords, I am very ready to acknowledge, that, in the Course of our Evidence, one of the Witnesses has said, That, by what he could observe, the noble Lord did not seem to be averse to his present Majesty; but his Repentment, he said, was against the Ministry, that had taken away his Company.

But how far that is agreeable to his Actions, Healths, and Declarations, that he was ready to join *Kouli Kan*, if he had come over, your Lordships will consider.

And, as to his Objection to Mr. *Murray's* Evidence, as remaining an attainted Person, I will only say (that it may appear in this Tryal when it comes abroad into the World), That although Sir *Thomas Armstrong* suffered upon the Notion, that a compulsory taking within the

the Year was not strictly a Surrender; yet, in the Second Year of his present Majesty's Reign, in the Case of one *Roger Johnson*, who had been outlawed for Treason, and was taken within the Year allowed by the Statute, the then Attorney General, like a true Friend to the Liberty of the Subject, disdained to insist upon *Armstrong's* Case; and the Court of King's Bench held it was immaterial, whether he came before them on a voluntary Surrender, or a compulsory Caption, so long as it appeared the Man was there, and amenable to Justice within the Time: And, in consequence of this, the Man had his Tryal, and was acquitted.

To apply this to our Witness, I need only observe, That it has appeared in Evidence, that his Time was not out till 12th *July* 1746, and he was committed Prisoner by the Lord Justice Clerk Fourteen Days before, and has ever since remained in Custody, amenable to the Law. The Precedent, therefore, I have cited, is directly in the Point, and founded in the Justice and Equity of the Case; for a Man, who has a fixed Time given him to come in, ought not to be prejudiced by being taken up before.

Some Questions, my Lords, have been asked our Witnesses upon their Cross-Examinations, and some Objections thrown out about Expectations of Mercy, which, I do not see, it is necessary to take Notice of at this Time: If they are relied upon by the noble Lord, in his Defence, the Reply will be the most proper Time to answer them; and to that I shall leave it.

All that now remains for me to do, in Discharge of the Commands I have been honoured with by the Commons, would be to take particular Notice of the Letters that have been read, and the Strength they communicate to the Evidence of the Witnesses.

But, as I have attempted something of this Nature as I went along, and they are also fresh in your Lordships Memory, it does not seem necessary to be making a separate Head of them.

In Gratitude therefore to your Lordships, who have thus honoured me with your Attention, I forbear to descant any farther upon these Letters; and if, in this, I shall be thought by those who sent me hither, to have been remiss in my Duty to them (to whom I own myself accountable), I shall humbly implore their Forgiveness for any Omissions I may have been guilty of in this Service.

This only I will say, upon the Letters, that whatever bodily Infirmities the noble Lord may labour under, yet whoever reads or hears those Letters, and considers the Strength and Energy of the Expressions, dictated by himself, must agree with him in what he intimated to *Sir Everard Faulkener*, That the Faculties of his Mind were yet intire.

I have now done, my Lords, with stating the Evidence that has been given in Proof of the High Treason charged in the Impeachment; and I should abuse your Lordship's Patience, if (after this) I should attempt to apply it particularly to the several Statutes I took Notice of in the Outset.

Surely, my Lords, I may venture to say, that these Facts (if not answered by the noble Lord) must, in your Lordships Judgment, amount to a full Proof of all the High Treason with which he is charged; and will abundantly justify me, in alluding to that Expression, contained in the noble Lord's own Letter to his Son, wherein he boasts "to have done more against this Government than would hang Fifty Lords, and forfeit Fifty Estates."

Thus, my Lords, have the Commons maintained their Impeachment, and supported it (as they think) with a Weight of Evidence suitable to the Dignity of their Interposition.

They think they have sufficiently shewn your Lordships, that this unfortunate Lord was not fit to be trusted to bring his Clan about again, *Et versare dolos*, as he offered to do. On the contrary, they think it appears, that they have properly singled him out, and brought him to this Bar, on their own Prosecution, here to receive your Lordships Judgment for the other Part of the Alternative pointed out by himself.

Lord High Steward. Gentlemen of the House of Commons, have you any thing further to offer, in Support of your Impeachment?

Sir William Yonge. No, my Lords.

Lord High Steward. My Lord *Lovat*, the Gentlemen of the House of Commons have closed what they have to offer by way of Evidence, and in Support of the Charge against you; and now is the Time for you to make your Defence, by making such Observations as you shall think fit, upon the Evidence which has been given against you, and upon what they have offered, by way of Argument, to enforce it. Your Lordship may likewise open your own Evidence, which you have to offer, and call your Witnesses, and pursue your own Method, as you shall think fit; provided it be agreeable to Law, and the Course of Proceedings in such Cases.

Lord Lovat. My Lords, I have already told your Lordships several times since I came here, that I was very weak and feeble, and really afflicted with a Distemper that made me almost incapable to appear here, if it had not been to shew my Obedience and Respect to your Lordships: And I now humbly beg, that since you are so good as to indulge me to say something for myself, that you will give me Four or Five Days, at least, to recover my Health a little, and to prepare my Evidence. And, my Lords, I have another thing humbly to propose to your Lordships: There is an Evidence, a very material Evidence for me, who is a Member of the House of Commons: I would humbly beg, that your Lordships would be pleased to take such Methods as you shall think proper, to make him appear at the Bar, and give his Evidence, which is but Two or Three Words, whatever Day your Lordships please.

Lord High Steward. My Lord *Lovat*, as to what you have mentioned, first, in asking for Four or Five Days, to make your Defence, and prepare your Evidence, that is an Interruption of a Tryal I have not known; but it is in the Judgment of the Lords what Time they will be pleased to give you. As to what your Lordship hath said, in regard to a Member of the House of Commons being a material Evidence for you, you must be advised by your Counsel (who are to advise you as to Matters of Law, and the proper Methods of Application) in what Manner you are to make your Application for that Purpose.

Lord Lovat. My Lord, I will take your Lordship's Advice, and will do so; but it will be impossible for me to appear before you, except I am better in Health.

Lord High Steward. Gentlemen of the House of Commons, have you any thing to offer, in relation to what my Lord *Lovat* has now said?

Sir William Yonge. My Lords, Nothing, but to submit it to your Lordships, when you will be pleased to proceed. My Lords, the Time that the Prisoner at the Bar has desired, is very extraordinary, and will be very inconvenient: But, my Lords, a reasonable Time the Commons will have no Objection to.

Lord Lovat. My Lords, I am at your Lordships Disposal; I am a Prisoner here, and submit intirely to your Lordships Determination, be it what it will.

The Lord President moved to adjourn to the Chamber of Parliament; and the Lord High Steward going back to his Chair, the House was adjourned accordingly. And then the Lords, and others, returned in the same Order as before.

And the House being resumed in the Chamber of Parliament,

Ordered, That a Message be sent to the House of Commons, by Mr. *Sawyer* and Mr. *Mountague*, to acquaint them, That the Lord *Lovat* having requested, that *Norman M^cLeod*, Esquire, a Member of their House, might be examined as a Witness at his Tryal, the Lords do desire, that they will give Leave to the said *Norman M^cLeod* to be so examined at the said Tryal: And that their Lordships will proceed further thereupon, in *Westminster-Hall*, on *Wednesday* next, at Eleven of the Clock in the Forenoon.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do take back the said Lord *Lovat*, and bring him again to the Bar of this House in *Westminster-Hall*, on *Wednesday* next, at Eleven of the Clock in the Forenoon.

Wednesday

Wednesday the 18th Day of March, 1746.

The SIXTH DAY.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on the First Day into *Westminster-Hall*, where the Commons and their Managers were in the Seats prepared for them respectively, as before. And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes, Lieutenant of the *Tower of London*, bring forth your Prisoner *Simon Lord Lovat*, to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Lord High Steward asked Leave to go down to the Table: And went accordingly.

Lord High Steward. My Lord *Lovat*, your Lordship may now proceed to make your Defence.

The Prisoner then acquainted their Lordships with his great Age and Infirmities, which rendered him, as he alleged, incapable of speaking what he had to offer; and that therefore he had put into Writing what he had conceived, and was advised to say on this Occasion; and which he desired their Lordships would be pleased to permit their Clerk to read at the Bar: And their Lordships permitting it, the same was read by the Clerk, as follows; viz.

My Lords,

IN my unhappy Situation, it is with the highest Pleasure and Gratitude, that I return my Acknowledgments to your Lordships, for the Indulgence you have shewn me, during the Course of my long Tryal: And had I, my Lords, met with any Degree of Justice from those who have appeared as Witnesses against me, it would have been unnecessary for me to have troubled your Lordships with any thing in my own Defence; but as there can be no Security against the Oaths of Persons who are swayed by Malice, or interested by the Hopes of Life, and Fears of Punishment, it becomes necessary for me to trouble your Lordships with a few Observations: First, as arising from the particular Circumstances of my Case; and, Secondly, upon the Nature of the Evidence that has been produced against me, and the Degree of Credibility which such Sort of Evidence deserves. With respect to the First, my Lords, upon being served with a Copy of the Articles of Impeachment, I immediately applied to your Lordships for an Order to bring up those Witnesses, whom I thought necessary for my Defence: And, considering the complicated Nature of the Treasons charged upon me, and the great Period of Time they were intended to comprehend, it cannot surprise your Lordships, that my List contained Sixty, or thereabouts. But, to my very great Misfortune, uncommon Methods have been used against me, to prevent their Attendance: The ordinary Judges have been divested of their Offices, and obliged to appoint others, who were recommended by the King's Officers, to officiate for them: Nay, the ordinary Seats of Justice have been, in my particular Case, forsaken, and new Courts erected, to which Numbers have been forced, under the severest Menaces, to attend as Witnesses against me; whilst all whom those new Judges and Rulers, upon their Inquisition, found might be serviceable to me in my Defence, have been overawed and intimidated; so that they durst not attend my Tryal. These, my Lords, are Facts as notorious in themselves, as unprecedented in these Kingdoms; and Facts which I can instantly prove, to your Lordships Satisfaction, partly by Affidavits now in my Hands, and partly by Witnesses of undoubted Credit, who have been brought Five hundred Miles from the *Highlands of Scotland*, with a View to be examined against me; and who, it is probable, have been laid aside, lest what I now take the Liberty to affirm to your Lordships, should, upon their Examinations, have been made to appear.

My Lords, By these, and such like Methods, have my Witnesses been terrified from appearing; at least, so very few have had the Resolution to venture, that they scarcely deserve to be named, and cannot be material for my Defence, without the Assistance of the others. I am therefore under the hard Necessity to forget yet a little longer the Inconveniences of a close and tedious Imprisonment, and to stifle that Desire of Liberty which is so natural to me, for some longer time, till, by your Lordships effectual Interposition, I can command the Attendance of my Witnesses; and, of Consequence, justify my Innocence: For, if your Lordships consider, that my very Words and Actions have been made the Subject of a critical Examination, from the Year 1719, my Case must appear extremely hard, and necessarily require a very circumstantial Proof, by Examination of those Persons with whom I have had any Inter-course, from that Period till now: But, if your Lordships should instantly oblige me to proceed upon my Defence, unprepared as I am, I must submit. Locked up a Prisoner in the Tower, I cannot make your Lordships Order effectual against the several Persons in the List I gave into this Honourable House; and to proceed to Tryal, whilst I am under these Circumstances, has the Appearance of so much Hardship, that I flatter myself it will move your Lordships effectually to interpose, and order some proper Method, by which my Witnesses can be forced to attend; and not suffer a Peer of the Realm to be destroyed, because he cannot work Impossibilities, or oblige me, like the *Israelites* of old, to make Brick without Straw. I must therefore humbly move, and insist with your Lordships, not to introduce a Precedent in my Case, which may be attended with the worst of Consequences to any Lord who shall hereafter be brought to your Lordships Bar. And, indeed, my Lords, I say this not altogether out of a Regard to myself: I am now Four-score Years of Age, have suffered many Changes, and, thank my God, have no unbecoming Fear for any thing I can yet suffer: I know, by the quick Advances and Frailties of old Age, that, in the Course of Nature, I am hastening to my End; and, by the Favour of the Almighty, I have been long preparing for that great and solemn Change: But this, my Lords, may produce a Precedent that shall prove fatal to many of younger Years. And, surely, your Lordships must be convinced I have the greater Reason to insist on this Demand, upon considering what I propose to lay before your Lordships, in the Second Place, namely, a few Observations upon the Nature of the Evidence, and the Credit that those Witnesses deserve who have sworn against me.

In general, your Lordships have undoubtedly perceived the high Improbability that runs through the Whole of *Chevis's* Oath: He, my Lords, takes upon him to swear to Conversations as far back as the Year 1719; and mentions as if I was then engaged in Plots against his late Majesty, at the very Time many of your Lordships know, and that it is notorious, I was highly in his Favour. It might, my Lords, carry the Air of Vanity, for me to mention to your Lordships the many particular Services I was thought to have done his Majesty, in the Year 1715: But allow me, my Lords, to say, they were Services of such a Nature as made his Majesty think me intitled to very distinguishing Marks of his Favour, as will appear by several Letters, which, by his Majesty's Orders, I had the Honour to receive from the late Lord *Stanhope*, my great and very worthy Friend: So that, my Lords, *Chevis's* Accounts are even more than improbable; besides, that the minute and particular Manner in which he swears to Circumstances that have happened so long ago, must render his Testimony too suspicious to be believed. And allow me to observe a very remarkable Circumstance, That he has carefully avoided to name any one Man who was present at any one of those Conversations, and could possibly have been brought to confront him, lest the same Providence which detected the Elder, in the Case of *Susanna*, might have detected *Chevis*. A farther Circumstance your Lordships will also allow me to observe, That it is not to be supposed, that I, or any Man of common Sense, should have talked so often, and so freely, upon a Subject of that delicate Nature, to a Person, who, if your Lordships can possibly believe himself, was always so openly and zealously affected to the present Establishment. But can your Lordships yet conceive any good Opinion of a Person who voluntarily offers himself as an Evidence to little trifling Conversations, which the only Opportunity he had of hearing was his eating at my Table, when he must have starved at his own, and perished for Cold, unless my Money had furnished him with Cloaths. In Evidence of this, I was, till very lately, possessed of many of his accepted Notes, for greater Sums than I am afraid he is yet able to pay, I having prevailed with a Friend to let me have Money upon them, to supply my present Wants; and I should be sorry if he shall suffer by his Friendship to me.

The next Three Evidences, who have appeared at your Lordships Bar against me, are those infamous Fellows, who call themselves Secretaries; the one, and on this Occasion I name *Murray*, the most abandoned of Mankind, who, forgetting his Allegiance to his King and Country, has, according to his own Confession, endeavoured to destroy both, like another *Catiline*, to patch up a broken Fortune upon the Ruin and Distress of his native Country; To-day stealing into *France* to enter into Engagements, upon, your Lordships may believe,

lieve, the most sacred Oaths of Fidelity ; soon after, like a sanguinary Monster, putting his Hand and Seal to a bloody Proclamation, full of Rewards for the apprehending the Sacred Person of his Majesty ; and, lest the Cup of his Iniquity had not been filled, to sum up all in one, impudently appears at your Lordships Bar, to betray those very Secrets, which, he confessed, he had drawn from the Person he called his Lord, his Prince, and Master, under the strongest Confidence. Your Lordships will perceive, I have yet forbore to mention the other Circumstances of his having received, since the Battle of *Culloden*, 35,000 *Loudors*, which he yet expects to live and riot on ; but, my Lords, who can consider the Price of Blood and Treachery, and not bestow that sort of Pity, which *Murray* the greatest Criminal, the true Disciple of his Master *Iscaiot*, calls for ? One thing more, my Lords, I cannot omit ; and that is, to take some Notice of the indecent and scandalous Liberty the Wretch has attempted to take, by aspersing a Number of very noble, worthy, and honourable Persons, of whose Innocence your Lordships were so fully persuaded, as to stop him in his Career, lest, like one of *Samson's* Foxes, he should destroy some of the worthiest Members of the Commonwealth. But if, after all that I have said, your Lordships can pay the most distant Regard to this Secretary's Evidence, it is hard to determine how many of his Majesty's other faithful Subjects may escape the licentious Liberty of his Impeachment ; for let him once think, that, upon the Multiplicity of his Accusations, his worthless Life depends, and there is no Reason to apprehend any of the most faithful Subjects can boast of a long Security. I will not, my Lords, trouble your Lordships much upon the Objections, to which my Counsel have spoke against the Competence of this Witness ; but, if a Desire of Life to so wicked a Person, who must be afraid to die, can be any Inducement to swear falsely, it is apprehended impossible any of your Lordships can give the least Degree of Credit to the Oath of the Villain Secretary *Murray*.

My Lords, the next Secretary I choose to trouble your Lordships with, is *Robert Frazer*, a Person who never had the good Fortune to be worth a Shilling, and whose Veracity and Truth never exceeded his Riches. He, my Lords, has taken upon him to swear to Letters wrote by himself, and many of them not pretended to have been signed by me : Others, my Lords, have neither Date or Direction ; and no sort of Proof has been attempted to be brought by the Managers, where, or in whose Custody, they were said to have been found. How weak an Evidence, therefore, this is to fix so heavy a Charge as High Treason upon a Peer of this Realm, is humbly submitted. But, my Lords, this Witness has also, to go through the whole Drudgery of Swearing, framed a very improbable and awkward Tale to your Lordships, of his having found, in a Writing-desk in my House, a Copy of a pretended Patent, creating me Duke of *Frazer*, which, by-the-bye, the Managers have not offered to produce ; and I must leave it with your Lordships, whether it is at all likely, that, if I had been possessed of such a Patent, I should have left it so carelessly loose ; or that, if I had, this Witness should have been the only Person in my numerous Family to have seen it ; for I am not now speaking of the Testimony of the other Witness *Hugh Frazer*. My Lords, is it, or can your Lordships think it possible I could have had the Copy, and not have had the Original ? The one was quite as easily sent as the other ; and your Lordships all know, that it is a mighty unusual Thing to send Copies of Patents, where Dignities are intended to be conferred. As to the other Part of *Robert Frazer's* Testimony, that relates to his writing for Arms, Powder, and Ball, I am persuaded it cannot make the least Impression upon your Lordships : First, because he has not deposed to express Quantities ; and, secondly, that it might have been so easy for the Managers to have brought a positive Proof, had the Fact been true, by the Persons from whom these Things were said to have been bought, or, at least, by those who carried them to my House, tho' indeed I can make no manner of Doubt, that had this Gentleman, *Robert Frazer*, thought it material, he would have gone a little farther, and sworn to that, as he is one of those honest Gentlemen, whose Mouth seldom opens, but for their Tongues to lye.

My Lords, I must next trouble your Lordships with *Hugh Frazer*, and again repeat a general Observation, That a Person, himself in the Rebellion, and who did, upon his Oath, declare at your Lordships Bar, That he would give no Evidence, except in Expectation of Life, cannot be reckoned an unsuspected Witness ; for, according to the Value which he shall set upon his own Life, must his Evidence be less or more hurtful to me ; since, my Lords, Life is the Purchase, and his giving Evidence the only Price. He says, That I shewed him a Copy of the Patent ; and yet, long after this pretended Time of shewing, he, my Lords, was the very Person to whom *Murray* declared, He knew nothing of such a Patent. He was also the Person, who received those treasonable Letters, that have been read against me ; and it is not pretended, that, after this Interview with *Murray* at *Glasgow*, I ever saw him, or had any Intercourse with him, till I was brought to your Lordships Bar ; nor is it laid to my Charge, that I ever received any of those Letters or Commissions, which *Frazer* is said to have

have brought from *Glasgow*. And here, my Lords, I must repeat the same Observation against *Frazer of Dunballoc*, who was himself in the Rebellion; and therefore, in like manner, swearing away my Life to preserve his own.

Many other Particulars, my Lords, I purposely omit, reserving my Observations, till I shall have your Lordships Order to bring up my Witnesses; and then, my Lords, I shall be able to falsify those Particulars, and, indeed, the whole Substance of this heavy Charge against me.

I must, my Lords, beg your Lordships Pardon for taking up so much of your Time. I labour under so many Disadvantages from old Age, and the Decay of the Faculties of the Mind, that it is no Wonder I should make a bad Defence for myself, unassisted either by Counsel or Solicitor; and that so many great and eminent Persons, skilled in the Laws, and Masters of *Ciceronian* Eloquence, have appeared to manage the Prosecution against me. But, I hope, in your Lordships Hands, my old Life is safe; and that your Lordships, whose noble Blood is like so many Fountains, from whence issue Streams of Humanity, Justice, and Honour, will not, nay, cannot, find me guilty upon the Evidence of such Witnesses as have defiled your Bar, and have no other Method left to expiate their own Crimes, but by laying them upon me: For your Lordships must allow me to observe, that all the Witnesses, except Sir *Everard Faulkner*, have both their Lives and Estates depending upon their giving such Evidence as may convict me: And even as to Sir *Everard*, he has Judgment enough to know, that, should I be acquitted, he would find it difficult to defend an Action at my Instance, for Reparation of uncommon Wrongs, and Acts of Violence, done by his Order upon my Estate, in cutting very valuable Woods, and appointing Receivers of my Rents; and consequently he has too great an Interest in my Conviction to be considered or received by your Lordships, as an unexceptionable Witness.

My Lords, to me, who am no Lawyer, it appears extremely strange and unreasonable, that *Socii Criminis* should be admitted Witnesses before they are pardoned; but if it is true, that the Law of *England* differs in this respect from the Law and Usage of all other Nations, I should be glad to know, how that Difference has been introduced.—I take it, my Lords, for granted, that it is not by the Force of any Statute; for, I am sure, the great Learning and Ingenuity of the Managers have omitted to mention none that concerns the Case of Treason; and, if it is by the Common Law, my Objection is intire, and can only be determined by your Lordships, as in this Case my Jury.

In some sort of Felonies, my Lords, I remember to have often heard of Statutes, which authorize a Proof of that Nature; but, in Treason, I never heard of one: And, indeed, the Necessity does by no means appear to me to be the same. 1st. Because the one is not so common as the other. And, 2^{dly}. Because there can be no Room to plead a Penury of Witnesses in Treason, which is laid to my Charge; whereas there may in Felonies. Another strong Consideration will naturally occur to your Lordships, that the Revenge or Malice of Power cannot operate in Felonies; but may in Treason.

If, my Lords, I should be told, It has been established by Custom, I must beg Leave to say, That, as it seems contrary to Justice and Reason to trust to the Evidence, which an Accomplice unpardoned is to give, it is incapable of being hallowed by Custom; since I am assured, that it is an established Rule, That, unless a Custom is reasonable, and according to Justice, it is void.

But allow me, my Lords, to ask, What Reason can be given, why these confessed Rebels have not been honoured with a Pardon previous to my Tryal? If it is that the Government believe, in that Case, they would not swear the Truth, can the Wit of Man invent a stronger Argument why your Lordships, in equal Diffidence, should not believe them when they have no Pardon; for, if they are such abandoned Villains (and, in Truth, my Lords, I believe them such) as to perjure themselves after a Pardon, when they can neither gain nor lose by the Evidence they are to give, surely your Lordships ought not to trust them, when their Lives depend upon giving such Evidence as may convict me, who have yet the Honour to be a Brother Peer.

One thing more, my Lords, and I have done; and that is, Should this sort of Proof be once established, I may venture to say, that *Delatores* would become greater Nufances here than ever they were at *Rome*; and that all our noble and antient Families will be, by degrees, cut off, upon Pretence of *Jacobite* or Republican Plots; since the History, my Lords, of all Ages shews, that Power can make Plots; and fatal Experience proves, that in every Age are Villains ready, like my Three Secretaries, to prove what Power shall hereafter dictate or expect.

Thus far I thought it my Duty, in Vindication of myself, to trouble your Lordships, and, without further trespassing upon your Patience, freely submit my Life, my Fortune, my Honour, and, what is dearest of all, my Posterity, to your Lordships.

Lord High Steward. My Lord *Levat*, Do you think fit to call any Witnesses?

Lord Levat. No, my Lords.

Mr. Solicitor General.

My Lords,

TH^O' the noble Lord perseveres in denying the Charge, yet, as he has called no Witnesses, but rests his Defence altogether upon Complaints, Observations, and Objections to the Force and Credibility of the Evidence against him, if I was to follow my own Inclination and Judgment, I should think it unnecessary to say any thing upon a Matter already sufficiently understood.

But I am told by the Opinion of those, whose Opinion is to me a Law, That I shall not do my Duty, nor perform the Part assigned me, unless I close this solemn Tryal, by calling back your Lordships Memory and Attention to the principal Grounds upon which we have proceeded; especially as they have now been objected to as insufficient, and complained of as setting an Example, which may be dangerous to Innocence hereafter.

The Gentlemen who manage this Prosecution have, in the Course of it, meant to do Justice to their Trust in such a manner, that the noble Lord at the Bar should feel the Weight of Truth, but not of his Accusers: And it is not to aggravate Guilt, or to press down the Load heavier upon him, that I am at this time commanded to speak; but to satisfy your Lordships now, and the World hereafter, from the Nature of the Evidence by which this Accusation has been supported, why no Part is attempted to be answered.

He has put your Lordships in mind, that the Law requires you, as his Judges, to be his Counsel; which is certainly true: And I am persuaded, Compassion, inseparable from noble Minds, has been ingenious to suggest to your Thoughts Doubts and Objections, in favour of one standing in that Place, who certainly labours under some Infirmities, and is allowed to defend himself by no other Tongue than his own.

If Scruples have arisen in the Minds of any of your Lordships, they will gain Strength from that Consideration; and the honest Prejudice you must feel from his Want of Assistance, may be of more Advantage to him, than the ablest Assistance he could have had.

It is proper therefore, it may even be necessary, to endeavour to set the Whole in such a View, as may tend to obviate every Possibility of Doubt.

There are but Two Things for your Lordships Consideration upon this Occasion:

First, Whether the Evidence given is a convincing and legal Proof of the Charge, if it be believed: And next, Whether there be any Reason to induce your Lordships not to believe it.

The only thing, in the Course of this Proceeding, which has not yet been done to satisfy your Lordships with regard to both these Points, is, to apply the particular Evidence that has been given to the principal Overt Acts laid in the Articles of Impeachment.

As this is the only thing which has not yet been done, it is the only thing which I shall attempt to do.

There are Three Kinds or Species of Treason, of which the noble Lord at the Bar stands accused by the Articles:

Compassing and Imagining the Death of the King.

Levying War against his Majesty within the Realm.

And Corresponding, contrary to a late Act of Parliament.

The Two first are Treasons, declared to be so by the Statute of the 25th of *Edward* the Third.

Compassing or Imagining the Death of the King is an inward Thought, or Operation of the Mind; and therefore, as God alone can judge of Thoughts, because He alone can know them, so, for this Kind of Treason, no Man can be convicted, unless he does some open Act, which proves the secret Intention of his Mind. It is not necessary, that the open Act should have an immediate Tendency to take away the natural Life of the King; but any Design to subvert his Government, or to raise War against him, which may, in Consequence, draw on his Death, has been long settled to be an Overt Act of this Species of Treason.

In High Treason, for greater Security, the Law requires a formal, as well as a convincing, Proof; and therefore no Man can be found guilty of High Treason, which is not proved by the Testimony of Two Witnesses. One, let his Credit be never so good, let him be supported by never so many Circumstances, is not sufficient.

But it is not necessary, that Two Witnesses should give Proof of the same Overt Acts: If they give Evidence in Proof of distinct Overt Acts, it is enough; provided they are Overt Acts of the same Species of Treason.

Having mentioned what legal Proof is required (for this was the Law before the 7th of King *William*, and is therefore applicable to the present Occasion), I will state the Overt Acts of each Species of 'Treason,' whereof the noble Lord stands impeached; and apply the Evidence to them.

Of Compassing and Imagining the Death of the King, the principal Overt Acts laid in the Articles are Three:

1st. That he conspired, with several of the King's Subjects, to induce a Foreign Power (the *French*) to invade this Kingdom.

2d. That he corresponded with the Pretender, in order to dethrone the King, and, with that View, solicited, and accepted, a Commission from him to be Lieutenant-General of the *Highlands*; and also solicited and obtained from him a Patent creating him Duke, as a Reward of his engaging in that Design.

3d. That he conspired to raise War and Rebellion against his Majesty within this Realm.

That Conspiring with a Foreign Power to invade the Kingdom is an Overt Act of Compassing the Death of the King, cannot now be doubted.

As to the Proof:

Robert Chevis proves, That, in *June* 1739, he heard Lord *Lovat* propose to *William Drummond* of *Bochaldie* the Project of an Invasion:

That, in 1740, he heard him say, There was an Association; and drank Success to it.

Robert Frazer proves a Letter of the 14th of *January*, 1746, from the noble Lord to his Son, to have been dictated by him, afterwards read over to him, approved of, and sent; in which are these Words:

"I was one of those that entered into a formal Association to venture our Lives and Fortunes to restore the King, and his Offspring; and we signed our mutual Engagements for this Purpose with our Hands and Seals, and sent it to *France* to the Cardinal *de Fleury*, then First Minister of *France*, by the Hands of Mr. *William Drummond* of *Bochaldie*. The Cardinal was so pleased with it, that he shewed our Engagements and Subscriptions to the King his Master, and begged of his Majesty to support us; and the King desired the Cardinal to assure us of his Protection and Assistance, and Succours to restore our King."

Here are Two Witnesses who give Evidence of that; which is direct Proof against the noble Lord of this Overt Act: But this direct Proof is strengthened by general Evidence.

John Murray of *Broughton* proves, That such an Association and Memorial was sent to the Court of *France*; and that *William Drummond* of *Bochaldie* was the Person who carried it; he names all who signed it; he was himself carried by this *Drummond* of *Bochaldie* to Monsieur *Amelot*, and introduced as coming from those, who signed and sent the Association and Memorial: He was received by Monsieur *Amelot* upon that Foot: He had an Answer from the *French* King to carry to those from whom he came.

This general Evidence is again corroborated by that, which is positive Proof against the noble Lord.

In his Postscript to the Letter I mentioned before, he says, If his Patent of Duke was refused, he would keep to the Oath that he gave to the Gentlemen who first engaged in the Project with him, that he would never draw his Sword till that was done. He mentions Three of the Persons by Name who first engaged with him; so that the general Evidence is supported by this Postscript, as to some of those who signed the Association, and particularly as to Lord *Lovat* himself.

The Authenticity of this Letter and Postscript don't rest upon the positive Testimony of *Robert Frazer* only; but is supported by the Letter from my Lord's Son, to which this is an Answer, proved to be the Hand-writing of the Son, and to have been found in my Lord's Custody.

There are other Circumstances which give Credit to the Proof of his having entered into the Association, which was sent to *France* by *William Drummond* of *Bochaldie*.

In his Letter to *Lockiel*, he inquires after Mr. *William Drummond*, as the Man whom he loved, and who loved him best.

Robert Frazer says, Lord *Lovat* told him, That his Patent was in the Hands of one *Drummond* in *France*.

And, in his Letter of the 14th of *January* to his Son, he says, The Patent was sent by *William Drummond*, as a Reward of his having joined in the Association.

The Second Overt Act of this Species of Treason, which I mentioned, was,

That he corresponded with the Pretender, in order to dethrone the King, and, with that View, solicited and accepted a Commission from him to be Lieutenant-General of the *Highlands*; and also solicited and obtained from him a Patent creating him Duke, as a Reward of his engaging in that Design.

Tho'

Tho' Corresponding with the Pretender be made Treason by Act of Parliament, yet Corresponding, in order to disturb the King's Government, is an Overt Act of Compassing the Death of the King; and so it is laid in the Articles.

As to the Proof of this Overt Act:

Robert Chevis heard him, in 1736, send a Message by *Roy Stewart* to the Pretender, with Assurances of his Fidelity, and that he would live and die in his Cause; and charged *Roy Stewart* to expedite the sending over his Commission of Lieutenant-General, and Patent of Duke.

This is corroborated by *Charles Stewart*, who met *Roy Stewart* in 1736 at *Boulogne*, and was told by him, That he was going to *Rome*; and hoped for a Place under the Pretender, thro' Letters of Recommendation which he carried from Lord *Lovat*.

Robert Chevis was told by Lord *Lovat* in 1742, That he had got a Commission of Lieutenant-General, and obtained a Patent.

Robert Frazer saw at *Gortuleg*, among Lord *Lovat*'s Papers, a Commission from the Pretender, appointing him Lieutenant-General.

He saw the Copy of a Patent creating him Duke.

He was told by Lord *Lovat*, after his Escape from Lord *Loudon*, That his Patent of Duke was in the Hands of one *Drummond* in *France*.

Hugh Frazer was told by Lord *Lovat*, That his Patent of Duke was in *Lockiel*'s Hands; and, in November 1745, my Lord shewed him a Copy of the Patent.

In his Letter to *John Murray* of *Broughton*, he refers to his Cousin the Bearer (who was this *Hugh Frazer*) about a Suit he had to make.

John Murray of *Broughton* says, *Gortuleg* explained this to relate to his Patent.

In his Letter to his Son, speaking of the Pretender, he says,

"When he was acquainted with the Association, he gave Mr. *Drummond* a Commission to me of General of the *Highlanders*, which I have."

"Last of all, the King was so good as to give such a singular Mark of his Favour to me, and my Family, that he created me Duke of *Frazer*, and sent me that Patent by *William Drummond*; of which I have a Copy."

The Original, he says, was left with old *Lockiel*.

In the Postscript to this Letter, he says,

"Tell your Captain-Lieutenant (*Hugh Frazer*) I beg of him to remember what I spoke to him about my Patent.—Put all Irons in the Fire.—I ask nothing of his Royal Highness, but to give his Countenance, and own publicly what his Father has done for me; which if he refuse, I must keep to the Oath, &c. never to draw my Sword till it was done."

This is corroborated by general Evidence given by *Broughton*, and *Hugh Frazer*: They talked at *Glasgow* about it: The Packet was not directed till *Hugh Frazer* should learn from old *Lockiel*, whether he had such a Patent.

Of this Overt Act there is direct positive Evidence, by the Testimony of Three Witnesses, *Hugh Frazer*, *Robert Chevis*, and *Robert Frazer*, supported by Two more, *Charles Stewart*, and *John Murray* of *Broughton*; and all the Circumstances, which confirm the Authenticity of the Letters.

The Third Overt Act, which I mentioned, of this Species of Treason, was,

That he conspired to raise War and Rebellion against his Majesty, within this Realm.

In his Letter to the Pretender's Son, he says,

"None of your Servants but will do me the Justice to declare, that I am, and always have been, the most zealous and active Partizan your Royal Highness has in the North of *Scotland*."

In his Letter to *John Murray*: "For many Years past I was the Life and Spirit of the King's Affairs in these Countries," &c.

"I made it my only Business to encourage and keep up the Hearts of the King's Friends."

In his Letter to his Son, he says, "Since that Association, I made it my Business, wherever I was, to promote the King's Interest, and to gain and encourage faithful Subjects to serve him: So that I have done more against this Government than would hang Fifty Lords, and forfeit Fifty Estates."

In the Postscript, "It can be easily proved against him (your Father), that he has done more against the Government than any one of his Rank in *Britain*."

Hugh Frazer proves, That he said he thought of heading the *Frasers* himself, as he believed Four or Five thousand Men would have risen; but that was disappointed.

He sent a Message to the young Pretender, by the Witness, That he had intended to have gone, at the Head of Four or Five thousand Men, to support his Interest.

When the Witness gave him the true State on both Sides, he said he had gone too far to go back.

In his Letter to *Lockiel*, he says, He had so managed the North, that 6000 Men would have marched South to join the Pretender, had not the Design been frustrated.

Robert Frazer proves, That he made Excuses to *Lockiel*, *Keppoch*, and others, for not having joined them publickly : That he made Excuses, after the Battle, to the young Pretender; and they both embraced.

This is strengthened by general Evidence given by *John Murray* of *Broughton*, that, when the young Pretender landed, a Message was sent to Lord *Lovat* by Doctor *Cameron*, and *Gortuleg* came from him.

And also by general Evidence given by *Robert Frazer*, that, soon after the Pretender landed, one *Cameron* came to Lord *Lovat*, and *Gortuleg* went to the young Pretender.

This is strengthened too by most of his Letters; which imply a previous Concert, and Assurances given: They are full of Apologies for his not acting up to that, which, he seems conscious, was expected from him.

His Wavering and Irresolution speak a Mind divided between former Engagements and present Fear.

At first, when he thought Four or Five thousand Men would be raised, he intended to have headed them himself: When that Scheme was disappointed, he neither would join the Rebels himself, nor send his Men. Upon the News of the Battle of *Preston-Pans*, he resolved his Son should go.

When an Account came of the Landing of the *Dutch* Forces in *England*, he resolves his Son should stay, so as to give Occasion to that Expression of his, That one Day undid what another did.

At last, when Lord *John Drummond* landed in *Scotland*, with a Body of *French* Forces, and Assurances of powerful Succours from *France*, he returns to the Design of sending his Son.

This Conduct, and Fluctuation of Counsels, shew he equally dreaded either breaking former Engagements, when the Attempt wore a Face of Success; or keeping them, when it looked desperate; and gives Credit and Strength to all the direct and positive Evidence, that the Case was so.

Thus this Overt Act is proved by the Testimony of Two Witnesses, *Robert* and *Hugh Frazer*, and supported by all the Circumstances which confirm the Authenticity of the Letters.

The Second Species of Treason, whereof the noble Lord stands accused by the Articles, is, Levying War against the King within the Realm.

My Lords, Levying War, properly speaking, and in the Nature of the thing, is itself an open Act, and may be laid as an open Act, of Compassing the Death of the King: It is impossible to consider a Man as levying War, without having done some Act. In Treason there are no Accessaries; all who assist are Principals. Tho' a Man should not himself appear in Arms, nor commit any Hostilities with his own Hands, yet if he voluntarily aids, in any Manner, those who are in Arms, and commit Hostilities, he is guilty of levying War.

But tho' levying War be really an Act itself, to be proved by the Hostilities committed, or Assistance given; yet, as the Letter of the Statute of *Edward III.* requires the Four Kinds of Treason first mentioned in that Act to be made out by open Deed, Overt Acts are always laid of this Species of Treason, tho', generally, they are only Descriptions of the Manner of levying War.

In the present Case, the Articles have pointed out particularly the Manner in which the noble Lord is charged with having levied War. And of this Species of Treason there are Three Overt Acts laid:

First, That he encouraged, by Messages and Letters, the Pretender's Son, and his Adherents, then in Arms, waging War against his Majesty, within this Realm.

Hugh Frazer proves, That he carried a Message from Lord *Lovat* to the young Pretender; the Purport of which your Lordships have heard.

Robert Frazer proves his Letters to the Pretender, *Lockiel*, and *John Murray* of *Broughton*.

His Evidence, as to the Letter I last-mentioned, is supported by its appearing to be written in Answer to a Letter of the 31st of *October*, from *Broughton*; and *Hugh Frazer* swears, he brought such a Letter from *John Murray* of *Broughton* to Lord *Lovat*, was privy to the Contents, and gives an Account of them: And *John Murray* of *Broughton* proves, That he received this Letter from *Gortuleg*.

All these Letters are established by the Postscript to his Letter to his Son, of the 14th of *January* 1746; in which he says,

"I send you inclosed the Four Letters which you should have carried with you from *Castle-Downey*: You may tell the Prince when you deliver the Letter to him."

The Authenticity of this is supported by his Son's Letter, to which this is an Answer.

So that, to this Overt Act, there are Two positive Witnesses, *Hugh* and *Robert Frazer*; besides all the Circumstances which give them Credit.

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The Second Overt Act of this kind of Treason laid in the Articles, is, That he sent his Son, at the Head of an armed Force, to join the young Pretender, and his Adherents, and assist them in the War they were then carrying on against his Majesty, within the Realm.

Robert Frazer proves, That Lord *Lovat* sent Letters early to Two Heads of different Tribes of the Name, to prepare their Men, in order to join the Master of *Lovat*:

That he ordered Colours and Bell-Tents to be got ready:—That his Men were twice rendezvoused just by his House, with his Privy:

That he ordered the Witnesses to give them Gunpowder, and delivered him the Key of the Place where it was, for that Purpose:

That he furnished them with Bonnets, Shoes, and Shot:

His Letters to the young Pretender, *Lochiel*, *Broughton*, and the Son himself, shew that he sent his Son, and the Men he led.

Hugh Frazer says, after his Return from the President, Lord *Lovat* gave his Opinion, that his Son should march with all Dispatch:

That this was his final Opinion, and should not be countermanded.

Robert Chevis proves, That my Lord offered him a Captain's Commission.

Hugh Frazer of *Dumballock* says, Lord *Lovat* asked him what Number of Men he could raise; and said the Master was to head and raise them—Declared he would send his Son and Clan—Wished himself younger, that he might go and command the Men himself—Blamed his Son's Slowness in raising the Men—Promised Gratuities to the Wives and Children of those who went South to the Pretender, and engaged to support their Families in their Absence.

W. Walker was present at Part of a Dispute between Lord *Lovat* and his Son, who threw his Cockade into the Fire.

He heard Lord *Lovat* say to *Frazer* of *Byerfeild*, “What would you have me do? I am forcing my Son out, the Life of me.”

Peter Frazer of *Balladrum* proves, That when the Men were rendezvoused, the Officers used to go to Lord *Lovat*, and he bid them go to his Son, their Colonel.

There are more; but I have already named Six Witnesses to this Overt Act, whose Evidence is confirmed by a Variety of Circumstances.

The Third and only other Overt Act of this kind of Treason, which I shall mention, is, That he conspired with many Persons in Arms, how to renew the Rebellion, when it was almost suppressed, and to raise Forces to keep it alive.

John Murray of *Broughton* proves, That Lord *Lovat* met at *Mortlign*, in the Island of *Morar*, Fifteen of the Chiefs of the Rebels:

That he said 3000 Men would be sufficient; and mentioned 400 *Frasers*, as the Quota of his Son; and desired *Lochiel* to answer for his Son.

John Farquhar proves, That he embraced *Lochiel's* Officers; and said, he did not doubt their getting 7 or 8000 real honest Men, to fight the Elector of *Hanover's* Troops.

Charles Stewart proves, That 3 or 400 *Frasers* were proposed as his Son's Quota; and that he desired *Lochiel* to answer for his Son.

All agree *French* Money was distributed for the Purpose of raising Men; and that 70 or 80 *Loudors* were given to a Man belonging to Lord *Lovat*, for the *Frasers*.

John Murray of *Broughton* says, That, Four or Five Days after, my Lord talked of sending the Servant who had received the Money, to his Son with it.

So that, to this Overt Act, there are Three concurring Witnesses.

The Third Head of Treason laid in the Articles, which is, knowingly corresponding with the eldest Son of the Pretender, and Persons employed by him, contrary to the late Act of Parliament, I pass over, because the Evidence to support that Part of the Charge is also Evidence upon the Two other kinds of Treason; and, as such, it has already been taken notice of.

All this particular Proof is strongly corroborated, if it wanted any Support, by a general Evidence of Guilt.

Lieutenant *Dalrymple* proves, That Lord *Lovat*, after he was taken, being asked, how he came to be engaged, said it was in Revenge for the Loss of his Company.

David Campbell asking how he came to be engaged in a thing of this Kind, at his Years, Lord *Lovat* said, he had been disobliged by taking away his Company.

Sir *Everard Fawkener* has told your Lordships, that he did not take Pains to deny his Guilt: That he put the Part he had acted upon Resentment to the Ministry, for having taken away his Company:—That he said, for the sake of Revenge, he would have joined *Kouli Kan*, had he come.

His escaping after he was first apprehended, the Condition and Place in which he was taken, shew, that he thought his only Safety lay in Flight.

After he was taken, his Declarations to those who took him; his Conversations with Sir *Everard Fawkenor*, well knowing who he was, shew an absolute Conviction, that the Part he had acted was too notorious to be dissembled.

My Lords, This being the Nature and Strength of the Evidence, upon which the Case now in Judgment depends; from the Precedent which may be made upon this Occasion, I little thought to have heard of Danger to Innocence hereafter.

If this were a doubtful Matter, if it were a measuring Cast, the Commons had rather the Guilty should escape, than run a Risk of the Innocent being condemned. When they accuse, they desire the Person accused may be convicted upon clear, satisfactory, and unanswerable Proof, or not at all.

The noble Lord at the Bar has complained of many Hardships: Few are the Tryals in which such a Complaint would be so little founded.

He had full Time to prepare for his Defence: At his own Request he has been indulged with Adjournments during the Tryal: He has had all the Advantages of Assistance which could be given, or connived at.

I wish the inflexible Rule of Law, as it still stands in Prosecutions of this Kind, could have allowed him to make his full Defence by others.

The Appearance of a Hardship would have been removed; but, as this Case is circumstanced, the removing that Appearance would have helped the Prosecution much more than the Prisoner.

I speak it feelingly, I had rather reply to the ablest Advocate, than do what my Duty now requires of me. It is painful to the last Degree, to observe upon any thing which has dropped from himself; but some Notice must be taken.

He has laboured to prove, That no Credit ought to be given to the Witnesses against him, because many of them are Accomplices, and speak from the Danger of their Situation.

I will allow, that the Hopes of Life, or the Fear of Death, may have induced some of them to give Evidence upon this Occasion, but not a false Evidence.

The same Hope or Fear is a Security against that: When the Commons accuse, and your Lordships sit as Judges, what Expectation can they have but from their Ingenuity and Veracity? Should they be caught prevaricating, should they be detected in a false Accusation, desperate were their Condition indeed.

But the noble Lord is misinformed, when he says an Accomplice ought not to be believed at all, till he is pardoned: If so, he could not be examined. The utmost Force of the Objection is no more than a Circumstance, to weigh in the Scale against his Credit; but then it must be balanced with the Matter of the Evidence, the Manner in which it is given, the Proof by which it is supported, and that by which it is contradicted.

The Matter here is probable and consistent: Nothing of Consequence rests upon a single Testimony: They who support each other first told their Stories separately; have never since had an Opportunity of conferring; and therefore could not agree in a Fiction.—One perhaps first examined in *London*, another at *Inverness*, neither knowing what the other had, could, or would say, kept in separate Custodies ever since,—it is impossible they should unite in the same Falshood.

The Manner too in which they gave their Evidence, carried with it a Degree of Conviction: To instance in one, the Behaviour of *Hugh Fraser* demonstrated what he told your Lordships: He said, if he had no Hopes of Mercy he would not have spoke at all; for if he submitted to be examined, he must speak religiously the Truth.

The visible Agonies, and Anguish of Mind, under which he laboured; the Ingenuity with which he answered the precise Question put to him, without ever going a Syllable beyond it; could not but force Belief to all he said; and shewed he gave the Answer because it was true, but wished not to have given it upon this Occasion.

When he first discovered what he knew, he has told your Lordships, that he thought himself in the Article of Death; and from what he then said he never has varied since.

The Proof by which their Testimony is supported, I have already laid together in one View: To contradict them nothing is offered.

The noble Lord says, the Witnesses who could clear him, are not here: Tho', in the Course of the Tryal, we heard of his having Witnesses, and what they would prove; he has not had Time enough to bring them;—he complains of their having been prevented: As he has not Witnesses enough, he won't call any.

These are Pretexes; but he let fall the true Reason why he has no Witnesses,—There is no making Brick without Straw;—There is no calling Witnesses without Facts;—There is no making a Defence without Innocence;—There is no answering Evidence which is true.

He has not so much as suggested what these Witnesses could prove, if they were here. I will do him the Justice to believe, that, if he could with Truth, he would not now throw the whole upon the stiff-necked, headstrong Disobedience of his Son—That unhappy Boy is already attainted, and now actually in Custody. Tho' he might have been made the Scape-goat, if he were out of Reach, yet, in his present Situation, I am sure the noble Lord would not defend his own Life by loading this unfortunate Youth: Much less would he attempt such a kind of Defence, contrary to Truth; for so it must be, if either the Prisoner himself, or our Evidence, is believed.

Would he call Witnesses to prove the Letters which have been read, to be forged?—Consider how they are authenticated.—To some his Signature still remains—He don't controvert its being like his Hand—The Bodies are wrote by *Robert Frazer*.—A Letter, unquestionably signed and sent by the noble Lord to his Royal Highness the Duke, was produced:—The Body is wrote by the same *Robert Frazer*. The Signature to this, and the Signature which remains to the others, appear manifestly of the same Hand.

One of the most material Letters is an Answer to a Letter wrote by his Son.—That too must be a Forgery;—yet it was found in his own Custody.—But the intrinsic Evidence of Authenticity is still stronger.

If the Letters are forged, how come they to give the same Account of the Association, and mention the same Persons concerned, as your Lordships have heard from the general Evidence?

If the general Evidence is a Fiction, how could the same Story get into these Letters?

If *Robert Frazer* invented the Letters, how came *Hugh Frazer*, and others, to give the same Account of the Patent and Commission which is to be found in them? If the Patent and Commission never were seen or heard of, how could they be put into forged Letters?—But Remarks are unnecessary, where the Case is so plain.—I have said thus much, to shew, that the noble Lord's alleging he wants Assistance, or has not his Witnesses, may be of more Service to him, than any Assistance, or Witnesses, he could have; and to shew, that the Commons have not taken upon themselves this Prosecution, to lay the noble Lord at the Bar under any Disadvantages, in his Defence. From the Witnesses who have been examined, the Case must appear to your Lordships such as no Advantages could have enabled him to get the better of. There are many Circumstances which induced them to single out this Prosecution; many Circumstances of a publick, many of a peculiar Nature. I am almost tempted to mention some of them;—but, in Part, they have occurred to your Lordships, in the Course of the Examination; and I refrain, lest I should drop any thing that might tend to inflame.—Every thing of that Sort has, by every body, been carefully avoided, upon this Occasion.—*That Ciceronian Eloquence*, as he calls it, from Principles of Justice and Humanity, has not been used against him. Every Gentleman, who has spoke in this Tryal, has made it a Rule to himself, to urge nothing against the Prisoner but plain Facts, and positive Evidence, without Aggravation.—They have addressed themselves to your Judgment, and not to your Passions. I dare say your Lordships have observed, that, tho' the Evidence given consists of a Variety of Facts, some more directly affecting the noble Lord, others less, and some, perhaps, not affecting him at all, neither in the Summing up the Evidence, nor in what I have now troubled your Lordships with, has any thing been mentioned as direct Evidence against him, which is not so. Circumstances which only tend to corroborate, have been mentioned in that Light; and Evidence which no way affects him, has not been repeated, or observed upon at all.

My Lords, The Whole is now before your Lordships: It is your Province to make the Conclusion which ought to be drawn from the Premises.

Lord Talbot. My Lords, The Abilities of the learned Manager who just now spoke, never appeared with greater Splendour than at this very Hour, when his Candour and Humanity has been joined to those great Abilities which have already made him so conspicuous, that I hope one Day to see him add Lustre to the Dignity of the first Civil Employment in this Nation. My Lords, I observe one thing in the Defence of the noble Lord at the Bar; which, for the Sake of the Managers for the Representatives of *Great Britain*, and out of the Regard that I have for their Constituents who deputed them, I think myself obliged to take Notice of.

My Lords, The noble Lord at the Bar, in his Defence, complains, I believe, very unjustly, of the Hardships he has suffered, in being deprived of his Witnesses; and, at the same time, mentions, that there are Witnesses of indisputable Credit, who were brought up, in order to be Witnesses against him, but who have not been examined by the Managers, for Fear they should, on their Cross-Examination, support those Facts.

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My Lords, I therefore now desire, for the Honour of the Gentlemen who are Managers of this Prosecution, that the noble Lord at the Bar may be asked, Whether he is now willing to have those Witnesses produced, and to have them asked any Questions concerning that Matter?

Mr. Attorney General. My Lords, What has been taken Notice of by the noble Lord, and what is desired by him, is extremely irregular, after the Managers have closed and summed up their Evidence; and the noble Prisoner had Liberty and Time given him, in the most indulgent Manner, to make his Defence in such Way as he should be advised. He was pleased to make a Speech to your Lordships, containing a great Variety of Facts, but declined producing any Witnesses; and tho' called upon for that Purpose, thought proper to acquaint your Lordships, that he should offer none to support those Facts which he had alleged: Your Lordships have, upon that Declaration, been pleased to proceed to hear the Managers Reply.

My learned Friend on my Left Hand hath executed that Part with great Justice to the Commands of the Commons, and all that Tenderness to the noble Prisoner, which was consistent with his Duty. Your Lordships have heard and felt the Weight of it.

The Proceedings are closed, and wait only for your Lordships Opinion. The Managers therefore are surprised to find the noble Lord now calling upon the Prisoner, to examine Witnesses which he did not think proper himself to examine, after the fullest Opportunity of considering it. And it appears by his own Speech, he has had Correspondence with his Witnesses since they came up. The Managers therefore must insist, that your Lordships will proceed to give your Opinion upon the Whole of the Evidence, which is now fully before you.

My Lords, I cannot but take notice of the Method which the Prisoner at the Bar has taken, of reflecting upon this Prosecution, in his Speech. He has complained in a heavy Manner, and endeavoured to induce your Lordships to believe, that those who have had the Conduct of this Prosecution, have been using undue Methods, either to get Witnesses to support the Charge, or to prevent him from having any Witnesses in his Defence. If the Prisoner at the Bar could have made out any thing of this Kind, your Lordships would certainly have heard it here, in Evidence; for his not doing it could not be out of Deference to the Commons, or to your Lordships, or to his Majesty.

He has represented as if a new Method was taken, of erecting uncommon Courts of Justice, to compel some Witnesses to give Evidence on one Side, and deter others from doing it on the other. My Lords, it is indecent to lay Reflections of this Kind before your Lordships, in this Manner. Is the noble Lord at the Bar now to say, I could have Evidence, if I had an Opportunity of producing it; and if your Lordships will give me Time, I will prove all that I have said? My Lords, what has he been doing ever since the Articles were exhibited? Who are the Persons he could now examine? Many of his Witnesses, he has said himself, are come up; has he made any Use of them? Have they been examined at your Lordships Bar? On the contrary, did not the Prisoner say, he would produce no Witnesses? Yet, says he, I will reflect upon the Proceedings; and say, that I could have Witnesses, if I had Leave and Time to produce them.

My Lords, a Prisoner who is tried for his Life, may think he has a Right to say any thing, how false, how unjust soever: But it is incumbent on your Lordships to prevent the Effect of such Reflections, to do Justice to all Parties, to the Government, the Commons of Great Britain, and the Managers. The Prisoner seems to have Hopes, that your Lordships may be prevailed upon, by this means, to believe, that there is some Truth in what he says. Your Lordships Indulgence now, of further Time, on this Pretence, would give some Colour to that Suggestion; and it will be imagined, that it was believed by your Lordships. I call upon the Prisoner himself, to declare, whether your Lordships did not indulge him with an Opportunity of calling any Witnesses, even those brought up on the Part of the Managers, on his giving them Notice for that Purpose? If your Lordships should now, upon what has been said by the noble Lord, which I do not doubt but he said from the great Regard he has to Justice, and from his Compassion for a Person appearing in the Circumstances of the Prisoner; I say, my Lords, if upon such a Suggestion your Lordships should now call again upon the Prisoner to produce his Witnesses, it will be giving Credit to that false and injurious Insinuation: And I hope your Lordships will not give Colour to imagine it was believed by You, by giving Leave to the Prisoner now to call Witnesses for that Purpose.

Lord High Steward. Have you done with your Evidence on both Sides?

Lord Lovat. My Lords, I am an unfit Person to say any thing after that great Man that has spoken last; but, since I am now upon my Tryal for my Life and Fortune, I must tell your Lordships what is really Fact, tho', perhaps, it may not be pleasing to that great Man, That there is not one Syllable of what he has said true. My Lords, it is certain, that I got your

your Lordships Order for bringing up Sixty Witnesses to this Place ; and it is certain that I sent a Gentleman, who was once allowed to be my Solicitor ; and, tho' I was robbed of my whole Money, and did not get a Farthing out of my Estate since I was taken Prisoner, yet I had Interest enough to get 500 *l.* from Mr. *Ross*, which was given to this Man, to bring up my Witnesses. My Lords, he came there to *Inverness*, and found all the Witnesses that I had named to him were very ready to come up ; but I was extremely surpris'd to find, that there was a new Court, besides the Court of the House of Peers, a little Depute of the Sheriffs, that took upon him to leave the common Place of Justice in the Tolbooth at *Inverness*, and to go to a private Place in the Suburbs, and there to erect such Courts as he thought fit ; and there he examined what Witnesses he pleased ; and those which he thought Friends to me were some of them put into Prison, others overawed and terrified, and others chased out of their Houses, their Houses burnt, and their Cattle taken away, and most of the rest obliged to go to the *Highlands*, and threatened to be undone, if they came to be Evidence for me. My Lords, after my Friend, that was sent to bring up my Witnesses, used all his Endeavours, and offered to bear their Expences, and to keep them, he could not get them to come up, because there was an Influence used by the General Officers in his Majesty's Service, and Persons sent up-and-down the whole Country, to threaten Part of the Witnesses, and to bribe others of them : So that, my Lords, tho' I am no Lawyer, nor Orator, as the learned Gentleman on my Left Hand is, yet I heard from a very great Man, that this was a Precedent which never happened in *Scotland*, and, he believed, not in *England* ; and he said to me, That it was most certain the Lords would take notice of it, because the Affront had been done to themselves. My Lords, after I was arraigned before your Lordships, and that the House of Commons had brought up Articles against me, that your Lordships would not allow any little Court of Inquisition to go afterwards, and to judge my Cause, as it were, before your Lordships. Therefore, my Lords, it is simply impossible for me to make my Defence, while I am not allowed the Witnesses that your Lordships ordered for me. That what I say myself is true, there are Two Affidavits here of it, if your Lordships please to let them be read by the Clerk.

Lord High Steward. My Lord *Lovat*, By our Law, Affidavits cannot be read as Evidence upon a Tryal : You must call Witnesses to prove the Facts. But I would ask your Lordship the Name of that Agent, whom you sent down into *Scotland* to bring up the Witnesses, and who gave you this Information ?

Lord Lovat. His Name is *Hugh Fraser*.

Lord High Steward. My Lord *Lovat*, I must put your Lordship in mind, that you made Three Applications to the House of Lords, by Petition, to put off your Tryal : The first was on the 19th of *February*, and the others on the 2d or 3d of *March*. One of those Petitions was supported by an Affidavit made by one *Hugh Fraser* : Was that the same *Hugh Fraser*, whom you sent, as your Agent, into *Scotland* ?

Lord Lovat. Yes, my Lord, it was.

Lord High Steward. Then, my Lord, there is another Affidavit annexed to your Petition to put off the Tryal, on the 3d of *March*, which is the Affidavit of *George Ross*. Now, in neither of these Petitions, tho' one of them is supported by the Affidavit of *Hugh Fraser*, whom you admit to be the Person you sent into *Scotland* to summon your Witnesses, is there any Allegation of any undue Practices, or any Restraint upon your Witnesses. How comes it to pass, when this *Hugh Fraser* came back from *Scotland*, and made an Affidavit to support the Petition to put off your Tryal, that this Complaint was not made then ?

Lord Lovat. My Lords, In the first place, it could not be done before, because they went upon these Methods but just before *Hugh Fraser* came up. I have a Minister of the Gospel, a very honest and worthy Man, whom they designed to make an Evidence against me ; and, I believe, he will tell the Truth upon the Subject of the Hardships done to my People, to keep them from coming up here to be Evidences ; I mean my Tenants.

Mr. *Noel*.

My Lords,

I Did not intend to have troubled your Lordships at all, not finding the noble Lord at the Bar had, in his Defence, made it necessary for me to take any Part in the Reply ; since what he has said (if it had been more material than the Nature of it appears to be), he hath said unsupported by any Evidence at all ; and the noble Lord very well knows, that, in every Court of Justice, a Prisoner is not expected to make his Defence by what he thinks fit to say himself ; but he must support it by Evidence, or it can have no Weight in Answer to the Evidence produced to support the Charge against him ; and, my Lords, it was for that Reason that I did not trouble your Lordships in that Part of the Case, which hath been so

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amply, minutely, and accurately gone through by my learned Friend, who has spoken to it. But, since the noble Lord has irregularly mentioned several Matters since the Reply was closed, I shall take the Liberty to make some Observations upon what he has insisted upon.

My Lords, the noble Lord at the Bar has made it Matter of Complaint to your Lordships, as if particular Methods of Practice had been used, to prevent his Witnesses coming up to appear in his Behalf. Your Lordships will give me Leave to say, that such Allegations ought to be considered as the highest Injustice, when his Lordship has not called one single Witness to the Truth of them, or to his own Defence. My Lords, this Affectation of saying Things, without supporting them by any Proof, after hearing the Reply of the Commons, and the summing up of the whole Proceeding, is a Method which was never known to be endured in any Proceeding by way of legal Tryal. My Lords, it is extremely easy for any noble Peer upon this Occasion, when he stands to be tried for his Life, and has no Defence to make, nor no Witnesses to produce; it is easy, I say, my Lords, to throw in Matters by way of Calumny; but your Lordships will not endure it, unless it is made at a proper Time, and supported by proper Evidence.

My Lords, I am the more surpris'd at this from the noble Lord at the Bar, because, whatever he may think of it, this I will say, that I know of no Instance in any Case where a Prisoner has been more fairly dealt with, or used with more Candour and Humanity on the Part of those, whose Business it is to make out the Charge against him, nor on the Part of those, by whom he is to be tried: And it is the more extraordinary, because, if I am not mistaken, till this very Day, he has declared to your Lordships, that he had Numbers of Witnesses ready to produce, who would falsify every Fact, which has been alleged against him.

My Lords, I will take notice, now I am up, of another Objection made by the noble Lord to some of the Witnesses that have been produced against him. My Lords, it is a known Objection; it has been often made, and as constantly over-ruled.

The noble Lord says, Some of the Witnesses are Persons interested; that they are criminal, as Accomplices in this Rebellion; and therefore ought not to be believed. Your Lordships will give me Leave to suggest, whether the laying down that as a Rule would not be of very ill Consequence, and, in effect, secure the most wicked Offenders from all Possibility of Punishment and Justice. My Lords, it is from a Principle of right Reason, and absolutely necessary to the Preservation of Government, that those who are concerned with them, should have Liberty to do Justice to the Publick by their Testimony. It is so in all Cases of Robbery, Murder, and other Felonies, and much more in Cases of Treason, where the Whole is in Danger. My Lords, if this was not so, the very End of Government would fail in every Particular, if those who are concerned, and best able to discover the Truth, are not allowed to give Testimony, for the sake of preserving the Nation. But, my Lords, in the present Case, I don't recollect any material Fact against the noble Lord at the Bar, but what has been proved by every Witness *viva voce*, and by every Letter that has been read, wherein not only his corresponding and treasonable Engagements have been made appear, but he has expressed himself, almost in every Letter, as manifesting the Glory he took, and Zeal he shewed, in that wicked Service, which he is proved to be engaged in to the last.

My Lords, we have nothing now to do, but to expect your Lordships Opinions upon the Evidence and Facts that have been laid before you; and in Contradiction to which, there is not one single Evidence produced by the noble Lord.

Here the Prisoner offered to speak.

Lord High Steward. My Lord Lovat, My Lords will be ready to hear every thing that you can offer, which is material for your Defence; but I must acquaint you, That the Commons, by the constant Rules of Proceeding in Cases of this Kind, are intitled to the last Word.

Lord Lovat. My Lords, I am far from blaming the Honourable Managers for the Commons, tho' they prosecute me with great Warmness, and especially the Man at their Head, who was, some time ago, my Friend and Acquaintance. But, my Lords, whatever they were pleas'd to object against me, as I was forced to speak for myself, I was oblig'd to answer; and, my Lords, since I asked the Favour of this House to force up my Evidence in the Manner they thought fit, your Lordship saying, That no Affidavit was good upon the Subject, my Lords, I have Two very good Witnesses, one a very Reverend Minister of the Gospel, that will prove the most extreme Hardships that ever were impos'd in this Country, to hinder my Witnesses from coming up to me; so that, if your Lordships do not, in your great Justice and Goodness, think it proper to order, in the Manner your Lordships please, to have my Witnesses come up, I must submit to your Lordships. You may do what you please.

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Lord High Steward. My Lord *Lovat*, I particularly asked your Lordship, Whether you would call any Witnesses to prove what you alleged in your Defence: To which you answered, That you would not.

Lord Lovat. My Lords, I would call Witnesses upon no other Account than this that I have mentioned. I have Witnesses to prove the Falsity of what has been said by the Witnesses against me; but, since I do not get Time to do that, I give it up.

Lord High Steward. Your Lordship does not attend to what I said, which was, That I asked you Two or Three times, Whether you would call any Witnesses to prove any Part of your Defence: To which you said, No. If you had any Witnesses, why did you not call them at that time?

Lord Lovat. This Minister was brought up as one of the Counter-Evidence. I told your Lordship, That I would call no Witnesses that Day.

Lord High Steward. Is that Minister here?

Lord Lovat. He is here.

Lord High Steward. Gentlemen of the House of Commons, It is certainly an irregular Method, in which the noble Lord at the Bar would proceed, to call Witnesses after the Reply; but I desire to know of you, Whether you oppose my Lord *Lovat*'s calling Witnesses now?

Mr. Attorney General. My Lords, It is a Difficulty upon us, who are appointed Managers, to carry on this Prosecution, and would do it with all the Candour and Indulgence possible, to insist, That the noble Lord, who is trying for his Life, should not now be admitted to produce Witnesses; but it is, perhaps, as difficult to know, how to dispense with that which is the known Course and Method of Proceedings, merely because the Prisoner, in an irregular and improper Manner, thinks fit to desire it. The Managers do not oppose their being produced, from an Imagination that they would say any thing material for the noble Lord at the Bar; but, if your Lordships are to break through all Methods and Rules of Proceedings, your Lordships will consider the Consequence. The noble Lord at the Bar told your Lordships, That he did not intend to call any Witnesses; and, upon that Foot, the Managers replied. He has now told you, That he would do it. But what is it that he would examine them to? Is it to make out any Part of his Defence to the Treason charged on him? That is not pretended; but to prove the Hardships he complains of, in being hindered from having his Witnesses; and the noble Lord at the Bar wants your Lordships Order now for their coming. The Tendency of this, if it means any thing besides Complaint, is to put off the Cause after it is heard; and, unless I had a greater Authority than I have at present, I cannot take upon myself, and I do not find that the rest of the Gentlemen, who are Managers, can take upon them, to depart from the known established Course of Proceeding, and to introduce a Precedent, that may be of bad Consequence. And, my Lords, I can hardly think, that the noble Lord at the Bar would insist upon doing it, but because he thought, that the Managers must insist, that he ought not. There is nothing that has occurred now, that did not, must not, have occurred to him before; and when the Prisoner thought fit to declare to your Lordships, after having full Time allowed him for the maturest Consideration, and Counsel appointed for his Assistance, That he would not call any Witnesses, you cannot but think such Determination of his was upon the Advice that his Counsel gave him; and your Lordships will hardly think, that the noble Lord can, at present, thus unadvisedly determine to call any Witnesses, which before, upon the Foot of the Advice he must be presumed to have taken, he determined not to do, from any Expectation that they would be able to do him any real Service, but from Views of another Kind. The Managers therefore doubt not that your Lordships will proceed in this Case, as you would in any other, to consider the Evidence, and give such Judgment on the Whole, as your Lordships shall think most right and just.

Lord Lovat. My Lords, I have often told your Lordships of the Infirmities that I labour under: I have often mentioned them to you; and the Want of Memory is the thing I regret most. I have been a Cripple these Four Years, and therefore not very capable to go to head Men in the Rebellion; yet I am much surprised to hear that Honourable Person, that is at the Head of the Law, and very deservedly placed there, that he should lose his Memory in an Hour's Time. My Lords, the Reason is plain to your Lordships, why I did not adduce Witnesses this Morning: The Reason was, because I begged of your Lordships Time to bring my Witnesses up from Scotland, that they might be produced to prove my Innocence; and the only Reason that I now desire to call these Two Witnesses, if your Lordships please, is, that they may prove before that great Man such Examples of extreme Hardships, as he will never find out in all his Law-Books.

Lord High Steward. My Lord *Lovat*, You mentioned but One Witness at first; and now you mention Two: Who is the other?

Lord Lovat. The Two are, *Donald Frazer* and *Alexander Frazer*.

Lord High Steward. Gentlemen of the House of Commons, Do you oppose my Lord *Lovat's* being admitted, tho' it is irregular, to call these Two Witnesses?

Mr. Attorney General. My Lords, I think we cannot, consistently with our Duty to the Commons, give up this Point, which would be attended with many dangerous Consequences, the Whole of which your Lordships may not now be able to foresee, if a Man, when he has closed his Defence, and says, That he will examine no Witnesses, and the Managers have replied, should afterwards be admitted, on such a Pretence as this, to examine Witnesses.

Earl of Cholmondely. My Lords, I am satisfied that the Manner, in which the noble Lord at the Bar desires now to call his Witnesses, is totally different from any Proceeding that I ever saw; but, as the accused Lord, in his Defence, has alleged several Hardships that he has undergone, in having his Witnesses prevented from attending his Tryal, and as that contains the highest Reflection upon the Government, and those who are employed under it, I would therefore desire to know of the noble Lord at the Bar, Whether, upon the Speech that he offered at the Bar, as it contains Objections to the Credit and Weight of the Evidence, and Complaints of undue Practices; whether, upon those Complaints, the noble Lord at the Bar desires the Opinion of the Lords, whether they will give him further Time, in order to produce his Witnesses?

Lord Lovat. My Lords, I was fully determined never to examine any Witnesses, when I found I was under such Disadvantages; and I humbly beg your Lordships Protection and Kindness to give me Time.

Mr. Solicitor General.

My Lords,

THE Matter now agitated is of the utmost Consequence not only to the present, but to all future Proceedings of this Kind; and I doubt, whether it is yet thoroughly understood, in its full Extent.

The Witnesses the noble Lord now proposes to call, are not to his Defence, or in Support of his Innocence.

If they were, how irregular soever it may be to offer them now, in my own Opinion, and, I dare say, the other Managers are of the same, I should be for consenting to their being called. We should never contend, tho' in Strictness we might, that any Evidence of this Kind came too late to be heard.

But the Design of calling them, as now opened, is to shew, that, from some Obstruction given to the bringing up his Witnesses, his Tryal ought to be put off to an indefinite Time; and that he may have new Orders to summon and compel Witnesses to come from *Scotland*. This we oppose, because the Application intended to be supported by it cannot now be made.

The Speech made by my Lord consisted of Two Parts: First, A Desire to put off his Tryal indefinitely; and, if your Lordships should not think fit to comply with this Desire, then he rested his Defence upon Observations, and Objections to the Force and Credibility of that Evidence which had been offered to prove his Accusation.

In this he was very proper; for tho' a Person accused calls no Witnesses, yet, if the Charge against him is not clearly made out by legal and credible Evidence, he ought to be acquitted. Being asked, whether he had any Witnesses to call, he declared he had none.

Had he desired to take your Lordships Opinion, whether the Tryal should not stay till he could send to *Scotland* for Witnesses, we should have opposed it. Your Lordships calling to the Managers to proceed, was a Determination, that you would not deliberate about staying the Tryal.

I own freely to your Lordships, the Reason why I did not take particular Notice of the noble Lord's Complaint, was, because I understood it to be meant as an Artifice to palliate his not going into any Evidence: And I did not think it necessary, I did not care, to endeavour to wipe off from his Apology any Varnish of this Kind with which he thought fit to colour it. One thing, had I thought of it, I would have taken notice of: He was pleased to say, that several Witnesses, brought up in Support of the Prosecution, were not called by the Managers, because they would have proved the Hardships he complains of. I can assure your Lordships, and every other Gentleman of the Committee will join in what I say, no one Witness was left unexamined for that Reason. It is true, more Persons were brought up to be Witnesses than we called; but the Reason of not calling them was, either because we thought what they had to say not material enough; or else, because they were liable to an Objection the noble Lord had made; which, whether well or ill founded, we did not care to give your Lordships the Trouble of disputing.

In Consequence of what fell from your Lordships, we told the noble Lord, in the Course of the Tryal, that any Witness examined by us should attend to be examined by him, if he desired it, and would give Notice: We should have done the same with regard to any Person brought up as a Witness, tho' not examined.

As to this whole Matter of Complaint, the Managers are intire Strangers to it. Nothing of that Kind has been done with their Privy, or Knowledge.

And this brings me to the Point, Whether Witnesses shall be now heard at this Time, to prove any such Ground for putting off the Tryal *sine Die*.

We oppose it, because, true or false, the Tryal cannot now be put off; and it would be a most dangerous Precedent, to go into an *Ex parte* Examination of such collateral Matters. Hearing the Evidence supposes your Lordships can do something in Consequence of it: If you cannot, it would be irregular and improper to go into it.

Before your Lordships appoint the Time of Tryal, you take into Consideration the Nature of the Charge, and the Place where the Facts arise, in order to allow a reasonable Time for Preparation, and bringing Witnesses.

Your Lordships did so in the present Case; and, after weighing all Circumstances, you appointed the 23d of *February*.

If, thro' any Accident, the Time fixed is too short, your Lordships are always open to Applications, which must be supported by Evidence, to shew the Delay is not affected; that all due Diligence has been used; and that the Witnesses are material, and expected to come within a certain Time.

Upon the Application of the noble Lord, your Lordships deferred this Tryal to the 5th of *March*.

Upon another Application by him, you deferred it to the 9th of *March*, the Day named in his Petition.

If he had any Ground sufficient for deferring the Tryal longer, he should have applied to your Lordships before it began; but, upon the Ground now mentioned, it could not have been deferred, even in that Way, because it is plain, this Matter, whatever there be in it, was within his Knowledge, at the time of the other Applications. *Hugh Frazer*, his Agent, who went down, as his Lordship says, to bring up his Witnesses, made an Affidavit, annexed to a Petition presented by his Lordship, on the 2d of *March*, for putting off the Tryal; and was called in, and examined at your Lordships Bar.

There was likewise an Affidavit annexed to his Lordship's Petition, presented on the 3d of *March*; and not a Syllable of this Complaint ever suggested; which shews, that they thought no Strefs could be laid upon it; and that it was not to be supported. In the Course of the Tryal hitherto your Lordships have heard nothing of it; on the contrary, you have heard of his Witnesses, and what they were to prove.

There is no Precedent of putting off a Tryal indefinitely, after the Evidence for the Prosecution is closed; I dare say there never will be such a Precedent. At soonest this Tryal could not come on again before the next Session of Parliament.

We oppose the attempting to prove a Matter upon which your Lordships cannot now do any thing; but I desire it may be understood, that we do not oppose, tho' it be at an improper Time, the calling any Witnesses upon the Merits of his Defence, either to disprove the Evidence against him, or to assert his own Innocence.

Then the Duke of *Newcastle* moved to adjourn to the Chamber of Parliament: And the Lord High Steward going back to his Chair, the House was adjourned accordingly: And then the Lords returned in the same Order as before.

After some time, the Lords, and others, returned into *Westminster-Hall*, in the same Order as usual; and the Peers having taken their Places, and the Lord High Steward being seated in his Chair, the House was resumed.

Then Proclamation was made for Silence, as usual.

Lord High Steward. Lieutenant of the *Tower of London*, take the Prisoner from the Bar; but you are not to take him away to the *Tower* yet.

Lord Lovat. If your Lordships would send me to the *Highlands*, I would not go to the *Tower* any more.

[The Prisoner was taken from the Bar accordingly.]

Lord High Steward. Your Lordships have heard and considered the Evidence in this Cause, and every thing that has been alleged by the Managers for the House of Commons,

and by the Prisoner. The solemn and established Method of your Proceedings requires, that I should ask your Lordships Opinions severally upon the Question, Whether the noble Lord the Prisoner is Guilty of the High Treason whereof he stands impeached, or Not guilty; and that those Opinions should be given in the Absence of the Prisoner. My Lords, this has always been your Rule; and after that is done, the Prisoner is to be brought to the Bar again, and to be acquainted by me with the Result of those Opinions. Is it your Lordships Pleasure to proceed now to give your Opinions upon the Question of Guilty or Not guilty?

Lords. Ay, ay.

Proclamation was then made for Silence, as before.

Then the Lord High Steward stood up, uncovered; and, beginning with the youngest Peer, said,

Lord High Steward. Henry Arthur Lord Herbert of Chirbury, What says your Lordship? Is Simon Lord Lovat Guilty of the High Treason whereof he stands impeached, or Not guilty?

Whereupon Henry Arthur Lord Herbert of Chirbury, standing up in his Place, uncovered, and laying his Right Hand upon his Breast, answered,

Lord Herbert. Guilty, upon my Honour.

In like manner, the several Lords aftermentioned, being all that were present, being respectively asked the same Question, answered as followeth;

Samuel Lord Sandys. Guilty, upon my Honour.

Richard Lord Edgumbe. Guilty, upon my Honour.

Stephen Lord Ilchester and Stavordale. Guilty, upon my Honour.

Henry Lord Montfort. Guilty, upon my Honour.

William Lord Talbot. Guilty, upon my Honour.

Robert Lord Raymond. Guilty, upon my Honour.

John Lord Monson. Guilty, upon my Honour.

Matthew Lord Ducie. Guilty, upon my Honour.

Charles Lord Cadogan. Guilty, upon my Honour.

Robert Lord Romney. Guilty, upon my Honour.

Richard Lord Onslow. Guilty, upon my Honour.

Allen Lord Bathurst. Guilty, upon my Honour.

Samuel Lord Masham. Guilty, upon my Honour.

Thomas Lord Trevor. Guilty, upon my Honour.

Francis Lord Middleton. Guilty, upon my Honour.

Bussy Lord Mansell. Guilty, upon my Honour.

George Lord Hay. Guilty, upon my Honour.

James Lord Somerville. Guilty, upon my Honour.

George William Lord Hervey. Guilty, upon my Honour.

Charles Lord Cornwallis. Guilty, upon my Honour.

John Lord Berkeley of Stratton. Guilty, upon my Honour.

John Lord Ward. Guilty, upon my Honour.

William Lord Byron. Guilty, upon my Honour.

Thomas Lord Leigh. Guilty, upon my Honour.

James Lord Strange. Guilty, upon my Honour.

Charles Lord Maynard. Guilty, upon my Honour.

John Lord St. John of Bletsoe. Guilty, upon my Honour.

Francis Lord North and Guilford. Guilty, upon my Honour.

Hugh Lord Willoughby of Parham. Guilty, upon my Honour.

Edward Lord Wentworth of Nettlested. Guilty, upon my Honour.

Richard Lord Willoughby de Broke. Guilty, upon my Honour.

Ferdinando Dudley Lord Dudley. Guilty, upon my Honour.

John Lord Delawar. Guilty, upon my Honour.

James Viscount Leinster. Guilty, upon my Honour.

George Viscount Torrington. Guilty, upon my Honour.

Simon Viscount Harcourt. Guilty, upon my Honour.

Hugh Viscount Falmouth. Guilty, upon my Honour.

John Viscount St. John. Guilty, upon my Honour.

Henry Viscount Lonsdale. Guilty, upon my Honour.

William Viscount Hatton. Guilty, upon my Honour.
Charles Viscount Townshend. Guilty, upon my Honour.
Thomas Viscount Fauconberg. Guilty, upon my Honour.
Richard Viscount Say and Seale. Guilty, upon my Honour.
John Earl of Buckinghamshire. Guilty, upon my Honour.
Francis Earl Brooke. Guilty, upon my Honour.
Hugh Earl Clinton. Guilty, upon my Honour.
Thomas Earl of Leicester. Guilty, upon my Honour.
John Earl of Portsmouth. Guilty, upon my Honour.
William Earl of Bath. Guilty, upon my Honour.
Robert Earl of Orford. Guilty, upon my Honour.
Thomas Earl of Effingham. Guilty, upon my Honour.
John Earl of Ashburnham. Guilty, upon my Honour.
Benjamin Earl Fitzwalter. Guilty, upon my Honour.
James Earl Waldegrave. Guilty, upon my Honour.
Robert Earl Ker. Guilty, upon my Honour.
William Earl Graham. Guilty, upon my Honour.
Thomas Earl of Pomfret. Guilty, upon my Honour.
George Earl of Macclesfield. Guilty, upon my Honour.
Philip Earl of Harborough. Guilty, upon my Honour.
Philip Earl Stanhope. Guilty, upon my Honour.
William Earl Cowper. Guilty, upon my Honour.
George Earl of Halifax. Guilty, upon my Honour.
John Earl of Granville. Guilty, upon my Honour.
Charles Earl of Tankerville. Guilty, upon my Honour.
William Earl of Strafford. Guilty, upon my Honour.
Laurence Earl Ferrers. Guilty, upon my Honour.
Edward Earl of Oxford, and Earl Mortimer. Guilty, upon my Honour.
Charles Earl of Portmore. Guilty, upon my Honour.
James Earl of Findlater and Seafield. Guilty, upon my Honour.
James Earl of Moray. Guilty, upon my Honour.
George Earl of Cholmondeley. Guilty, upon my Honour.
Francis Earl of Godolphin. Guilty, upon my Honour.
John Earl Poulett. Guilty, upon my Honour.
William Earl of Jersey. Guilty, upon my Honour.
William Earl of Coventry. Guilty, upon my Honour.
William Henry Earl of Rochfort. Guilty, upon my Honour.
George Earl of Warrington. Guilty, upon my Honour.
Robert Earl of Holderness. Guilty, upon my Honour.
Baptist Earl of Gainsborough. Guilty, upon my Honour.
Willoughby Earl of Abingdon. Guilty, upon my Honour.
Augustus Earl of Berkeley. Guilty, upon my Honour.
George Henry Earl of Lichfield. Guilty, upon my Honour.
Anthony Ashley Earl of Shaftesbury. Guilty, upon my Honour.
Richard Earl of Burlington. Guilty, upon my Honour.
Francis Earl of Doncaster. Guilty, upon my Honour.
Henry Earl of Carlisle. Guilty, upon my Honour.
George Earl of Cardigan. Guilty, upon my Honour.
Philip Dormer Earl of Chesterfield. Guilty, upon my Honour.
Daniel Earl of Winchelsea and Nottingham. Guilty, upon my Honour.
Harry Earl of Stamford. Guilty, upon my Honour.
Charles Earl of Peterborough and Monmouth. Guilty, upon my Honour.
John Earl of Westmorland. Guilty, upon my Honour.
Edward Earl of Warwick and Holland. Guilty, upon my Honour.
Henry Earl of Lincoln. Guilty, upon my Honour.
Henry Earl of Pembroke and Montgomery. Guilty, upon my Honour.
Thomas Marquis of Rockingham. Guilty, upon my Honour.
William Marquis of Lothian. Guilty, upon my Honour.
John Marquis of Tweeddale. Guilty, upon my Honour.
Henry Duke of Chandos. Guilty, upon my Honour.
Robert Duke of Manchester. Guilty, upon my Honour.
William Duke of Portland. Guilty, upon my Honour.
Thomas Duke of Newcastle. Guilty, upon my Honour.

Evelin Duke of Kingston. Guilty, upon my Honour.
Peregrine Duke of Ancaſter and Keſteven, Lord Great Chamberlain. Guilty, upon my Honour.
Archibald Duke of Argyll. Guilty, upon my Honour.
John Duke of Montagu. Guilty upon my Honour.
John Duke of Rutland. Guilty, upon my Honour.
Thomas Duke of Leeds. Guilty, upon my Honour.
Charles Duke of Bolton. Guilty, upon my Honour.
Charles Duke of St. Albans. Guilty, upon my Honour.
Charles Noel Duke of Beaufort. Guilty, upon my Honour.
Charles Duke of Richmond. Guilty, upon my Honour.
Charles Duke of Grafton, Lord Chamberlain of his Maſteſty's Houſhold. Guilty, upon my Honour.
William Duke of Devonſhire, Lord Steward of his Maſteſty's Houſhold. Guilty, upon my Honour.
Lionel Cranfield Duke of Dorſet, Lord Preſident of the Council. Guilty, upon my Honour.

Then the Lord High Steward, laying his Right Hand upon his Breſt, ſaid,
Lord High Steward. My Lords, I am of Opinion, That *Simon Lord Lovat* is Guilty of the High Treason whereof he ſtands impeached, upon my Honour.
Lord High Steward. My Lords, There are One hundred and Seventeen of your Lordſhips preſent; and you have unanimouſly found, That *Simon Lord Lovat* is Guilty of the High Treason whereof he ſtands impeached. Is it your Lordſhips Pleaſure, that he ſhould be brought to the Bar, and acquainted therewith?
Lords. Ay, ay.

Proclamation was made for Silence, and another Proclamation for the Lieutenant of the Tower to bring the Priſoner to the Bar; which was done in the ſame Order as before: And then Proclamation was again made for Silence, as uſual.

Lord High Steward. *Simon Lord Lovat,* The Lords have conſidered the Charge of High Treason, which has been brought againſt you by the Houſe of Commons: They have conſidered the Evidence, and all that has been offered to maintain the Charge: They have alſo conſidered every thing that has been alleged in your Lordſhip's Defence: And, upon the whole Matter, their Lordſhips have unanimouſly found, That you are guilty of the High Treason whereof you ſtand impeached.

Lord Preſident. My Lords, I move your Lordſhips to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordſhips Pleaſure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

The Houſe was accordingly adjourned to the Chamber of Parliament; and the Lords and others returned in the ſame Order as before.

And the Houſe being reſumed in the Chamber of Parliament,

Ordered, That this Houſe will proceed further, in order to the giving of Judgment againſt *Simon Lord Lovat,* To-morrow, at Eleven of the Clock in the Forenoon, in *Weſtminſter-Hall.*—And

A Meſſage was ſent to the Houſe of Commons, by the former Meſſengers, to acquaint them therewith.

Ordered, That the Lieutenant of the *Tower of London,* or his Deputy, do take back *Simon Lord Lovat,* and bring him again to the Bar of this Houſe in *Weſtminſter-Hall,* To-morrow, at Eleven of the Clock in the Forenoon.

Thursday the 19th of March, 1746.

The SEVENTH DAY.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on the First Day, into *Westminster-Hall*; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, as usual, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes, Lieutenant of the *Tower of London*, bring forth your Prisoner *Simon Lord Lovat* to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Serjeant at Arms, by Direction of the Lord High Steward, made another Proclamation for Silence.

Lord High Steward. *Simon Lord Lovat*, When your Lordship was last at this Bar, I acquainted you, That your Peers had found you Guilty of the High Treason whereof you stand impeached, by means whereof you are convicted of that High Treason: And I am now to ask your Lordship, What you have to say, why Judgment of Death should not pass upon you, according to Law?

Lord Lovat. My Lords, I am very sorry I gave your Lordships so much Trouble in my Tryal; and I give you a Million of Thanks for your being so good, in your Patience and Attendance, whilst it lasted. I thought myself very much loaded by one *Murray*, who, your Lordships know, was the bitterest Evidence there was against me. I have since suffered by another Mr. *Murray*, who, I must say with Pleasure, is an Honour to his Country, and whose Eloquence and Learning is much beyond what is to be expressed by an ignorant Man like me. I heard him with Pleasure, tho' it was against me. I have the Honour to be his Relation, tho' perhaps he neither knows it, nor values it. I wish, that his being born in the North may not hinder him from the Preferment that his Merit and Learning deserves. Till that Gentleman spoke, your Lordships were inclined to grant my earnest Request, and allow me further Time to bring up Witnesses to prove my Innocence; but, it seems, that has been over-ruled. All now that I have to say, is a little in Vindication of my own Character. I was pointed out by the Honourable Managers as a most inveterate Enemy of the Royal Family now upon the Throne, and the most zealously attached to a Family that is not like to come upon the Throne. My Lords, I humbly beg, that your Lordships will take notice, that my Attachment to the Family of *Hanover* is proved without Contest, after the great Services I have done. I was honoured by the King's Favour and Countenance, that made me so naturally and gratefully attached to his Person and Family; and as I was for Twelve Years in *Germany*, almost every Day in Conversation with his Majesty and his Family, I thought it necessary to know the History of his Family; and I read it very particularly; both the publick and private History of it: And I must say, that since your Lordships, and this Nation in general, thought fit to have a King from *Germany*, you could not have chose one from a more illustrious House; so great, that several Emperors of *Germany* have been elected from out of that Family; and they always behaved with great Distinction, both in the Wars, and in their own Country. I will only give one Instance of that, which I had from my dear Master the late King's own Mouth (of glorious Memory). I heard him say this to the Emperor's Envoy, after the Siege of *Belgrade*, when the Envoy told him, That there were Forty thousand Janissaries killed upon the Spot: "Why, says he, to the Envoy, I shall be very glad of it; but I know the Nature of those Animals: If 40000 of them are killed at Night, in the very Place of those that are killed, 40000 will rise up the next Morning. I have had Experience of the War with the *Turks*; I was with 6000 of my own Men, at the Siege of *Buda*: And, I believe, they will do me the Justice to say, that both I and my Men behaved as we ought to have done." This shews,

my Lords, that I always had a true Notion of the Greatness and Illustration of the Family of *Hanover*. I gave signal Proofs of it in the Year 1715; and I beg your Lordships will indulge me to repeat a little of what passed at that Time, because there are several Lords here that were not then born. My Lords, when I came into *England*, in the Year 1714. my Design was, that, with the Assistance of my Friends, the late Duke of *Argyll*, and the present Duke, I should endeavour to get my Remission, to go down into my own Country, to endeavour to recover my Fortune, and to serve the Government faithfully, in what I was able. In this Situation I was, when my Lord *Marshall* set up the Pretender's Standard at *Aberdeen*. It did much alarm the Court. I was sent for, and particularly spoken to by the Earl of *Sunderland*, and my Lord *Townshend*, who were always my Friends. My Lords, this present Duke of *Argyll* was so generous, that he would follow his Brother to *Scotland*, and expose his Life as a Volunteer; and he suffered by it; for at the Battle of *Sherriff-Muir*, he had a Ball went thro' his Side and Arm, and had almost lost his Life, if it had not been by the extraordinary Skill and Diligence of one Mr. *MacGill*, a Surgeon, who attended him. When he went down, he told me, Dear *Lovat*, you must do your best for us now; and I desire you may meet me in *Badenoch*, with all the Men you can get together; and I will gather all the Men I can in *Argyllshire*, and meet you there. I went down on Horseback, and he went down Post. Before I came to my own Country, I found that the Rebels were got together in vast Numbers; and as *Inverness* was the great Capital of all those Parts, my Lord *Marshall* resolved to send 2000 Men to reinforce the Garrison of *Inverness*, that it might not be surpris'd. The *MacIntoshes* and the *MacDonalds* were gathered together, in order to go to *Inverness*. When I found it was impossible for the Earl of *Illy* to come with his Men from *Argyllshire*, I resolved to distinguish myself, even tho' by a desperate Stroke. I had gathered together 200 Men at *Stratherrick*; with these I marched to *Inverness*, and invested it. Sir *John MacKenzie*, the then Governor, had 1000 Men in the Town; so I found there was nothing for it but Boldness. I sent a Message, which, indeed, looked like a *French* Galconade, that I would blow him, and his Garrison, and the Castle, and the strong Steeple, into the Air, if they did not surrender to me before Ten o'Clock the next Day; tho' I had not Two Pounds of Powder. At the same time, I sent a Party of Men, in which was a pretty Gentleman of Skill, one Captain *Ross*, the Laird's Brother. Whether Sir *John MacKenzie* heard this over Night, I can't tell; but he inquired, If I was fully resolved to attack the Town. He told him positively, That I was. Says he, if *Simon* be there, he is a desperate Fellow; I believe I must leave the Town to him: And accordingly, he run off that Night, with all his Men. This I did, my Lords, before any of the loyal Clans to this Government were raised. After this they were pleas'd to declare me General of the King's Forces there. When I got together near 2000 Men, of which 1000 were my own, I resolved to attack Lord *Seaforth*, who was coming with 2500 Men, to join Sir *John MacKenzie*, at *Inverness*, or to fight any of the Rebels that should meet him: He called them so. He stood his Ground till I came within Half a Mile of him. I drew up the little Army I had in pretty good Order, being an Officer for many Years before: And I can say to your Lordships, that, I believe, I am the oldest Officer in Commission in *Great Britain*; for Fifty Years ago I was Captain of Grenadiers in King *William's* Army. They were the *Sutherland* Men, Lord *Ray's* Men, and some of the *Grants* and *Monros*: But when I came to march up the Hill, to attack Lord *Seaforth*, I had none followed me but the *Monros*. When they found I was come within Sight of them, they made a precipitate Retreat to a Bridge that was near them, over a River: And afterwards, by Lord President's Advice, who was then in the Army, Lord *Seaforth* came, and submitted to me, as General of King *George's* Forces, promising immediately to lay down his Arms; which he did. This Submission was brought up, and shewn to the Ministry. I then went, and reduced the Duke of *Gordon*, who gave me the most ample Submission I ever read, to the King; and Assurances of Fidelity to him and to the Government. That Submission I likewise shewed; and, if they are not consumed in my House that was burnt, they are still extant. My Lords, then I pursued the Rebels from Place to Place, and chased them from Hill to Hill. On this Expedition I lost my only Brother, who was a very brave young Fellow; and I never left off pursuing the Rebels till the Rebellion was suppressed and extinguished: So that I may fairly say, that I assisted to keep the Crown upon the late King's Head, as much, if not more, than any one Man of my own Rank in *Britain*. I had then several Invitations to come to Court; and had Three Letters of Thanks from the King's Person, by the Hands of the great Earl *Stanhope*, who was Secretary of State then; in which he says, that he was so sensible of my extraordinary and signal Services, that he would, all his Life, give me such Marks of his Favour, as would oblige all the Country to be zealous and faithful to me. Upon this I came to Court; and I was not disappointed. I believe there are Lords in this House, I am sure there are a great many yet alive, that know I was a particular

Favourite

Favourite of the late King's; I believe more than any one of my own Rank, in *Scotland*. I remember my Lord *Townshend* told me one Day, who was my particular Friend, That I was certainly a great Favourite of the King; and, if all the Ministry should join together to hurt me, that it was not in their Power to do it; and that he would do me all the Service he could; and said, the King would not refuse any thing he should ask for me. And the King, to my own certain Knowledge, reproached the *Scotch* Ministry, that I was not provided for. But that unhappy Nation has been always divided amongst themselves, between the Family of the *Argylls*, and that of the *Montroses*; so that they, knowing me to be a Relation and Partizan of the Family of *Argyll*, they never would do any thing for me. At last, the King said, he must do it himself; and sent for the *Hanoverian* Minister, and told him, That he must immediately fix upon a Way to give me a Pension: At last, it was ordered by the King's particular Instruction, that I should have a Letter, or Patent, for myself, for 300 *l.* a Year; which I enjoyed till now, for any thing I know. Then all the *English* Ministers, every one of them, were my Friends; and they proposed, that I should go into the Army. Lord *Cadogan*, who, in the Year 1716, went with an Army into *Scotland*, sent for me; and desired me to bring up 500 Men to *Badenoch*, to escort him to *Inverness*: Which I did. They gave out, that the *Highlanders* were to attack him in the Woods: But when they heard, that I was with him, with the best Part of my Clan, they did not think it proper to attack him. After Lord *Cadogan* came to *Inverness* he sent for Sir *Robert Monro*, who was killed at the Battle of *Falkirk*: He called me into his Closet with him, and told me, We are now fully convinced, Lord *Lovat*, that it was you, and a few of the King's Friends that were joined to you, that subdued and suppressed the Rebellion, and extinguished it; and that all that was wrote in the Gazette about Lord *Sutherland*, was all Romance. Now, I am so sensible of those Services that you have done the Government, that, if you will join yourself to the Duke of *Marlborough*, to the Earl of *Sunderland*, and to me, that are thought the Favourites of the King, we will, in the first Place, immediately make you a Major-General: You shall have a Regiment of Foot, or Dragoons, and 3000 *l.* a Year Pension, during your Life. My Lords, if I had accepted of that Offer, I had now had the best Estate in *Scotland*; and would have been fair for being one of the Field-Marshal's of *England*, being the oldest Officer: But, my Lords, the Condition was too severe; and I had rather never have any Being than be ungrateful. The late Duke of *Argyll*, I mean this Duke of *Argyll's* Father, who was one of the greatest Men that has been in our Country for many Ages; he was a Father to me, and protected me as his own Child; he got me Two Remissions from King *William*; and, as he was carrying another Remission in, to be signed by Queen *Anne* (King *William*, to my Misfortune, having died that Year), he found the Door shut; that is, he found that Three Men had turned out all King *William's* Friends, of whom he was one, and the Duke of *Queensberry*, and several others; and that she brought in Two Families, the Duke of *Hamilton*, and the Marquis of *Athol*; who she made a Duke; and to please him, with whom my Family unfortunately had a Quarrel, about an Estate; to please him, I say, she put 2000 *l.* upon my Head, which was 1000 *l.* more than ever was usual. So I told the Duke of *Argyll*, that I had nothing for it but to go to *Hanover*, and there to live and die with Fidelity to the Duke of *Hanover*. He told me, that he was well assured, that the Duke of *Hanover* would be glad to receive me; but, as he was then declared the Protestant Heir, and that Succession depended much upon the good Will of Queen *Anne*, he must, upon her Desire, be obliged to send me back to *England*; and that he did not know a safe Way for me but to go to *France*, because we were at War with them then. And that was the first thing, my Lords, that obliged me to go to *France*, which was the Foundation of my Misfortunes. Now, my Lords, after what I have told you, I must humbly submit it to your Lordships, whether you do not think it is improbable, that I should be an Enemy to King *George*, and his Family: I, that received more Marks of Favour from the late King *George* than any Subject in the North; I, that got my Estate settled in his Time, both by the House of Commons and Peers; I, that expected never to be out of Favour with the Government, being very zealous to promote any thing that was for the Good of it. My Lords, I commanded a *Highland* Company for Fifteen Years, as their Colonel: And the Country can testify, that there was no Depredation, Theft, or Robbery, committed there during that time: I took Twenty-five *Highland* Robbers in the *Highlands* in one Night, and brought them all Prisoners to the Tolbooth of *Inverness*. I continued to act in the Manner that General *Wade* from time to time ordered me. I own I did not expect, that he, who reviewed my Company every Year, and called it the best Company that he ever saw in his Life—I must make the Lords laugh upon that Occasion: He told me, that Mr. *Pulteney*, now Earl of *Bath*, said, in the House of Commons, that he knew old *Lovat* very well; that he would never have a Company but in his Pocket: And now I can tell him, That he did not speak Truth. General *Handside*

was present, and his Brother, who is a very pretty Gentleman, when he declared, that he never did see such a fine Company in any Country that he was ever in: And he appealed to the Two *Handsides*, and the other Officers that were there, whether it was not true; and they all agreed in it. So that, my Lords, after this, I very little expected, that, without ever blaming me, or imputing any Crime to me, my Commission should be broke; and not only so, but that I should be ordered to keep 400 Men from it in the Country, to be put into another Company, to make up a Regiment that General *Wade* procured for his Favourite Colonel *Durore*. My Lords, I was certainly much out of Humour to see myself so used; but I never imputed it to the King, nor to his Prime Minister Sir *Robert Walpole*, afterwards Earl of *Orford*. And this is all the Grounds of my being out of Temper, or that they can lay hold of, to say I was against the Government. So, after what I have told your Lordships, and the Manner that I have been used, I hope your Lordships will not think I was capable of any malicious Design against the Government. And, indeed, it was a Loss to the Government more than to me, that my Company was broke, because, if I had commanded the *Higbland* Company, as I did for Fifteen Years, the Country had been peaceable, and there had been no Rebellion.

Lord High Steward. My Lord *Lovat*, I must put your Lordship in mind of the Question I asked you, Whether you have any thing to offer in Arrest of Judgment?

Lord Lovat. Whatever way I may be over-ruled, I will say, to my dying Hour, that I have met with the greatest Hardships ever practised in *Britain*; and I still insist, that I shall get the Benefit that all Subjects have a Right to, of adducing Witnesses, that may be for the Safety of their Lives and Interests.

Lord High Steward. Your Lordship has heard the Opinion of the Lords already.

Lord President. I move your Lordships to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

Then the Lords, and others, returned to the Chamber of Parliament, in the same Order they came down: And the House being there resumed,

The Proceeding entered in the Journal of the 19th of *March*, 1715, in relation to the Giving of Judgment against *George* Earl of *Wintoun*, was read: Which being done,

Their Lordships were informed, That the Commons, with their Speaker, and the Mace, were at the Door: Whereupon they were called in: And Mr. Speaker, at the Bar, said,

My Lords,

THE Knights, Citizens, and Burgeses, in Parliament assembled, did, at this Bar, in the Name of themselves, and of all the Commons of *Great Britain*, impeach *Simon* Lord *Lovat* of High Treason, and exhibited Articles against him, and have made good the same: I do therefore, in the Name of the Knights, Citizens, and Burgeses, in Parliament assembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordships against *Simon* Lord *Lovat* for the said High Treason.

And they being withdrawn,

Ordered, That, when Judgment shall be pronounced against the said Lord *Lovat*, it be the same as was pronounced against the late Earl of *Wintoun*.

Then the House was again adjourned into *Westminster-Hall*: And the Peers, and others, went down in the same Order as before; and the Peers being in their Places, and the Lord High Steward in his Chair, and the Commons and their Managers in the Seats prepared for them respectively; the House was resumed: And the Serjeant at Arms made Proclamation for Silence, as usual.

Lord High Steward. My Lord *Lovat*, As some time has intervened since I last asked you the Question, Whether you had any thing to offer in Arrest of Judgment, I am now to ask you again, Whether you have any thing to say, why Judgment of Death should not pass upon you, according to Law?

Lord

Lord Lovat. No: I have said all that I had to say; and beg your Lordships Pardon for the rude, long Discourse I made to your Lordships. I had great need of my Cousin *Murray's* Eloquence for half an Hour, and then it would have been more agreeable.

Proclamation was made for Silence, as usual.

Lord High Steward.

Simon Lord Lovat,

YOU have been impeached by the Commons of *Great Britain*, in Parliament assembled, of High Treason, charged upon you by particular Articles, containing different Species, and various Overt Acts, of that Treason.

To these Articles your Lordship thought fit to put in an Answer, amounting to a general Plea of Not guilty to the Whole; and, after a long and impartial Tryal, upon the clearest and most convincing Evidence, against which you offered no Defence by Witnesses, your Peers have unanimously found you Guilty.

What remains is the disagreeable, but unavoidable, Part of proceeding to that Judgment, which is the necessary Consequence of such atrocious Crimes. Happy had it been for your Lordship, if, before you engaged in them, you had suffered the Terrors of that Consequence to have their due Weight, when the sacred Ties of your Allegiance, and your Oaths, were not strong enough to restrain you.

In this Proceeding, the Zeal and dutiful Affection of the Commons to his Majesty, and their Country, and the Justice of the House of Peers, have shone forth in their full Lustre. The Commons found your Lordship to be one of the principal Conspirators, who contrived and carried on the late detestable Rebellion, to destroy our Religion and Liberties, and to subvert that Legal Settlement of the Crown in His Majesty and His Royal Family, under which alone we can live Free and Happy.

They rightly judged, that this, which is the common Cause of all the People of *Great Britain*, ought to be Prosecuted by the United Voice of the People: That it became them to investigate and lay open, in full Parliament, the Source of those Calamities, which we have lately suffered, and the deep-laid and long-meditated Conspiracy, in which your Lordship had so considerable and so flagitious a Part. They rightly judged, that no Judicature was equal to such an Important Proceeding, but this High Court; on whose Penetration and Justice they relied, and before whom, in this Great Assembly, Publick and Indubitable Satisfaction might be given.

Before your Conviction, I have spoken to your Lordship upon a Presumption of your Innocence; but now I am bound, by the unanimous Decision of my Lords your Peers, to take the Evidence against you to be True, and to address myself to you as a Guilty Person.

Your Lordship has, in your Answer, endeavoured to avail yourself of former Services to His late Majesty and the Protestant Succession, which you have this Day enlarged upon at the Bar. How unfortunate have you been in referring back to such cancelled Merit, since thereby you have furnished an Opportunity to the Commons, to shew, for how long a Tract of Time you have conceived and nursed up this Treason in your Heart! Whatever your Pretences were, so infected was your Mind, and so forward your Zeal, in the Cause of that Pretender, whom you had then abjured, as to engage in that rash and weak Attempt from *Spain*, in His late Majesty's Reign. Yet, at or very near that Time, it appears, by the Evidence (out of which every Observation I will make shall naturally arise), you were soliciting or accepting Favours and Trusts from that very Government, which you had thus engaged to destroy. What Use did you make of those Trusts? The Instance of *Roy Stuart*, now an Attainted Rebel, speaks it too plainly. Whilst you were Sheriff of the Shire of *Inverness*, the largest County in *Scotland*, and one of the greatest Consequence, you suffered that Criminal, in the Year 1736, to escape out of your publick Prison; harboured him afterwards in your own House; then charged him with Messages, and Assurances of Fidelity, to the Pretender; and to procure for you a Commission of Lieutenant-General, and a mock Title of Honour, from that Pretended Prince.

If any thing could surpass this Treachery, it is the Association, which your Lordship signed and sealed, together with Six other Persons, and sent to *Rome* and *Paris*, by *Drummond of Boxbaldie*, in the Beginning of 1740. The Substance of this was, to assure the Pretender, whom you always called your Lawful King, of your Readiness to appear openly in Arms for his Service; and to solicit an Invasion from *France* against your Native Country, to support this desperate Design.

It should seem, by the Evidence, that the Foreign Enemies of *Britain* were less forward in this Measure to disturb her, than her degenerate Unnatural Sons. Whether that Reluctance proceeded from a Distrust of so false a Set of Men, or from a Conviction, that the Body of this Great People was not to be shaken in their Loyalty to a King, who possesses the Throne by the most Rightful Title, and governs them in Justice and Mercy, according to their Laws and Constitution; in either Case they were in the Right. What Dependence could the Court of *France* have on a few abandoned Traitors? What Hopes could they entertain, that a general Infatuation would, on the sudden, seize and delude a Brave, a Free, and a Happy People, to seek their own Slavery and Ruin?

From this Time till the Year 1743, the Conspiracy lingered in its Progress, tho' great Efforts appear to have been made to render it more extensive, and more formidable. Then it happened, as it always has happened, that when *France* saw such an Enterprize, whether successful or not, might be made a convenient Engine of her own Politicks, that Court set about an Invasion in earnest. Great Preparations were made, and ready at *Dunkirk*; but the Providence of God disappointed them. To be capable of proving Transactions of this Kind by strict Evidence in the Forms of Law, is not common, nor, in the Nature of the Thing, ordinarily to be expected. But this the Vigilance of the Commons has effectually done, to the Conviction of all well-intentioned Persons, and to the Shame and Confusion of those, who, tho' they believed, and perhaps knew it themselves, were industrious to propagate a pernicious Incredulity in others.

Thus the Commons have traced and brought down the Series of the Conspiracy to the remarkable *Æra* of *July*, 1745, when the Eldest Son of the Pretender landed in *Moidart*, unsupported by any Foreign Troops, unattended, and almost alone.

The appearing Rashness of this Attempt gave Rise to some Apprehensions, some Misgivings, in the Breasts of your Lordship, and your Fellow-Conspirators, proceeding from a Concern, not for the KING, or for your Country, but for your own private Interest and Safety. A *French* Invasion had been long solicited; a *French* Force was depended on, to secure you against the just Vengeance of your Native Country; and the Failure of that damped your Hopes, and produced your Expressions of Disappointment. However, such was your Zeal, that, in this rash Enterprize, your Lordship joined; not indeed personally (this you often excused, complaining of your Infirmities), but by Sending, or rather Forcing out your Clan; and committing every other Species of the blackest Treason, which the Articles of Impeachment have charged upon you.

Permit me to stop here a little, and lament the Condition of Part of this United Kingdom; happily United in Interests both Civil and Religious; happily United under the same Gracious Monarch, and the same Publick Policy: And yet the common People, in some of the remote Northern Counties, are still kept in such a State of Bondage to certain of their Fellow-Subjects, who, contrary to all Law, and every true Principle of Government, have erected themselves into Petty Tyrants over them, as to be liable to be compelled into Rebellion against their Lawful Sovereign, under the Peril of Fire and Sword. Astonishing it is, that such a dangerous Error in Government, such a Remain of Barbarism, should have subsisted so long in any Quarter of this Civilized Well-governed Island: But, since such is the Misfortune, let it be accounted one good Fruit of this Inquiry, that it has appeared in this solemn Manner. The Knowledge of the Disease shews the Way to the Cure; and it calls aloud for a Remedy.

This usurped Power was audaciously made use of over your Clan. 'Tis true, your Lordship's Activity in exerting it rose and fell, in proportion to the Appearances of the good or bad Success of the Pretender's Cause: But, after the Advantage gained by the Rebels at *Preston-Pans*, which you vainly called "a Victory not to be paralleled in History," you thought it Time to throw off the Mask; and, with less Caution, to espouse a Party, which, you then hoped might be espoused with Impunity.

I forbear to enumerate the many Overt Acts of your Treason. It would be tedious to this Assembly, who have heard them so much better from the Witnesses, and from the Recapitulation of the Managers. It would be grievous to your Lordship, if your Heart is, by this Time, touched with any Remorse for your Guilt. But one Thing I cannot help observing upon,—the Excuse you expressly made for this traiterous Conduct, even after you were taken Prisoner; to which you have this Day artfully endeavoured to give a different Turn. Being asked, How you could act such a Part against a Government, from which you had received many Favours? your Lordship's Answer was, "That it was in Revenge to the Ministry, for their ill Usage of you, in taking away your Commission of Captain of an Independent Company of *Higblanders*." An Excuse almost as false as it was profligate. False, because some of your Treasonable Practices were committed whilst you were possessed of that very Com-

Com-

Commission. Profligate it was, in the highest Degree. Is Allegiance no Duty? Are Oaths to His Majesty, and His Government, no Obligation upon the Conscience? Is Loyalty to our Lawful Sovereign, and the Love of our Country, to depend on the Enjoyment of extraordinary Favours and Emoluments, which no Man has a Right to; can, in the Nature of Things, be enjoyed but by a Few; and are in the Pleasure of all Governments to confer or deny? A Person actuated by, and avowing, such Principles as these, must be lost to all Sense of Virtue, and of Shame, and of every Natural, as well as Civil, Sanction of Society.

Sorry, very sorry I am, to see this last Reflection so strongly verified by the Proofs against your Lordship. It has appeared, that you used your Paternal Influence over your Eldest Son, a Youth not above the Age of Nineteen, to compel him to go into the Rebellion; and afterwards unnaturally endeavoured to cast the Crime, and Reproach of it, upon him. If this be true, 'tis an Impiety which makes one tremble. It is the celebrated Saying of a wise Writer of Antiquity, and shews his perfect Knowledge of Human Nature, "That the Love of our Country includes all other Social Affections:" For we see, when that is gone, even the tenderest of all Affections, the Parental, may be extinguished with it.

I have said these Things, not with a View to aggravate your Lordship's Crimes, but, as becomes This Place, and This Occasion, to rouse your Mind, which, there is Reason to fear, may have been too much hardened, to a just and deep Sense of your unhappy and dreadful Situation.

Were I to attempt this from Topicks of Religion, I should be at a Loss, whether to apply to you as a Protestant or a Papist. Your Open Profession, your Solemn Oaths, and Publick Actions, speak on one Side: But, if I am to believe the Evidence, your Private Discourse and Declarations testify on the other. I will apply no Suppositions on this Head particularly to your Lordship; but from hence I would draw an instructive Lesson, which well deserves the Serious Attention of this Whole Nation, of what important Consequence it is, to preserve not only the Name and outward Form of the Protestant Religion amongst us, but the real Uniform Belief and Practice of it. Indifference to all Religion prepares Men for the External Profession of any; and what may not That lead to? Give me Leave to affirm, before this Great Assembly, that, even abstracted from Religious Considerations, the Protestant Religion ought to be held in the highest Reverence, as the surest Barrier of our Civil Constitution. Ecclesiastical Usurpation seldom fails to end in Civil Tyranny. The present Happy Settlement of the Crown is, in Truth, and not in Name only, THE PROTESTANT SUCCESSION. And the Inviolable Preservation of that Wise and Fundamental Law, made since the Revolution, whereby every Papist, or Person marrying a Papist, is absolutely Excluded from Inheriting to this Crown, will, in future Times, be a solid Security for our Posterity, not only against the groundless and presumptuous Claim of an Abjured Pretender, and his Descendants, but also to prevent this Kingdom from becoming a Province to some of the great Popish Powers, who have so long watched for the Destruction of our Liberties.

But, to return to your Lordship: Suffer me to exhort you, with great Earnestness, and in great Charity, to deliberate seriously upon your own Case, and to deal impartially with your own Conscience. If, according to the Evidence given at this Bar, you have led a Life of Craft, Diffimulation, and Perfidy, consider how that Scene has closed; what Desolation you have thereby endeavoured to bring upon your Country; how fatally it has ended for yourself. Consider, that the Sentence which I am obliged to pronounce, may soon send you to a Tribunal, where no Disguise or Artifice can avail you.

The Sentence of the Law is, and this High Court doth adjudge;

"That You, *Simon Lord Lovat*, Return to the Prison of the *Tower*, from whence you came; from thence you must be drawn to the Place of Execution; when you come there, you must be Hanged by the Neck, but not till you are Dead; for you must be cut down Alive; then your Bowels must be taken out, and burnt before your Face; then your Head must be severed from your Body, and your Body divided into Four Quarters; and these must be at the King's Disposal."

And God Almighty be merciful to your Soul!

Lord Lovat. My Lords, I hope your Lordships will not take it amiss, that I should let you know, tho' it be in a very barbarous Language, both the Affection I had for his late Majesty, and the Service I did for him and his Family. And I must say, I have for that the Testimony of one of the King's Evidence, that I declared my Affection to his present Majesty: And I have Reason so to do; for when he was Regent of these Kingdoms, and his Father was in *Hanover*, he was so good as to give me a *Noli Prosequi* for the great Laird of

MacIntosh that was at the Battle of *Preston* : And when I complained of the Hardships the Duke of *Roxburgh* put every Day upon me, in an Audience he was pleased to admit me to, in his Closet at *Kensington*, he was so good as to say, that, if he was King, he would defend me against all my Enemies, not only the Duke of *Roxburgh*, but all my other Enemies. Now, my Lords, when a Man has but a very few Days, in Appearance, to live, what he says should be relied upon, if there is not immediate Evidence to the contrary. I have shewn your Lordships my Esteem for the illustrious House of *Hanover*. I have shewn my Attachment for my dear Master the late King, and my Respect for his present Majesty ; and therefore all that I have further to say, is most humbly to implore your Lordships Intercession, and to recommend me to his Majesty for Mercy.

Lord High Steward. Have you any thing further to offer ?

Lord Lovat. Nothing, my Lords, but that I make the same Prayer to the Honourable the Members and Managers of the House of Commons ; and that, I hope, as they have been stout, they will be merciful.

Lord High Steward. Would you offer any thing further ?

Lord Lovat. Nothing but to thank your Lordships for your Goodness to me. God bless you all, and I bid you an everlasting Farewel. We shall not meet all in the same Place again, I am sure of that.

Lord High Steward. Lieutenant of the *Tower*, Take the Prisoner from the Bar.

Which being done, Proclamation was made for Silence, as usual.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Usher of the Black Rod, upon his Knee, his Grace stood up uncovered ; and, holding the Staff in both his Hands, broke it in two, and declared that there was nothing farther to be done by virtue of the present Commission, and pronounced the same to be dissolved ; and then leaving the Chair, came down to the Wool-Pack, and said, Is it your Lordships Pleasure to adjourn to the Chamber of Parliament ?

Lords. Ay, ay.

Then the House was adjourned to the Chamber of Parliament ; and the Lords and others returned in the same Order as they came down.

And the Prisoner was carried back to the *Tower of London*.

F I N I S.

E R R A T A.

P. 2. l. 21. for *having*, r. *have*. P. 4. l. 12. r. *the Clock*. P. 23. l. 17. r. *Correspondences*. P. 25. l. 39. r. *Captain-Lieutenant*. P. 40. l. 14. from Bottom, r. *Manager*. P. 50. l. 10. dele the first *that*. P. 54. l. 6. for *Concession*, r. *Confession*. P. 55. l. 9. from Bottom, r. *Allegation*. P. 62. l. 9. from Bottom, for *in*, r. *of*. P. 63. l. 23. and also in l. 24. for *found*, r. *bound*. P. 65. l. 10. for *this*, r. *be*. Ibid. l. 7. from Bottom, r. *Attainder*. P. 78. l. 8. from Bottom, for *was*, r. *wants*. P. 81. l. 5. from Bottom, for *Glengary*, r. *Glenmely*. P. 82. l. 8. from Bottom, insert *Lochiel* in the Blank. P. 91. l. ult. insert *L*. P. 97. begin the Page, by inserting *Sir William Yonge*. P. 101. l. 6. for *what*, r. *which*. P. 105. l. 17. dele the first *that*. P. 156. l. 27. r. *into a*. P. 159. l. ult. r. *Proceeding*. P. 160. l. 6. & 8. from Bottom, r. *Normand*. P. 173. l. 36. r. *2d and 3d*. P. 179. l. 4. from Bottom, r. *Chandos*. P. 183. l. 38. for *who*, r. *whom*.

